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Current Topics.

The Mesopotamia Report.

WE POINTED out last week the objections to holding an Army Court of Inquiry to proceed with the further investigation of the conduct of the Mesopotamia Expedition, and we also suggested that a further inquiry was, under the circumstances, useless. In both respects this view has proved to be correct, and in the House of Commons on Wednesday Mr. BONAR LAW announced that the Government did not propose to proceed further with the matter, either by a Court of Inquiry or by the alternative of a special statutory tribunal. The objection to a Court of Inquiry was that such a court is not a proper or effective tribunal for inquiring into the conduct of civilians, and it is a little singular that the Attorney-General should either have overlooked this, or not allowed the objection its proper weight. As to persons subject to Army law the case is, of course, different; though as to them it may be questioned whether, in a case depending on broad considerations, rather than on technical rules of evidence, there has not already been sufficient inquiry. The substance of the matter is beyond the scope of our comments, though we may express appreciation both of the motives which have led Mr. AUSTEN CHAMBERLAIN to resign, and of the generosity shewn by Mr. BALFOUR in refusing to allow Lord HARDINGE to do so.

The Courts (Emergency Powers) Acts.

THE NEW Courts (Emergency Powers) Act, which was passed on the 10th inst., has now been issued, and will be found on another page. Emergency Practice rests in the main upon the Act of 1914, and having regard to the great novelty of the subject-matter this appears to have been successfully drafted. There was at first, indeed, some difficulty as to the contracts which fell within it, and the draftsman used a needlessly puzzling form of words to define "rent" to which it applied; but we do not know that these matters have caused any particular trouble. While there is still considerable doubt as to the circumstances under which the Court will interfere, and

perhaps some want of uniformity in chambers, we are inclined to think that the Act—a troublesome one at best—has worked as well as could be expected. There have been, hitherto, only two amending Acts—both in 1916—the first extending emergency protection to members of H.M. Forces without some of the restrictions imposed by the principal Act, and giving power to determine tenancies; and the second clearing up some doubts as to the remedies of mortgagees and placing a further restriction on foreclosure; allowing premiums on certain leases subject to the Increase of Rent, &c., Act, 1915; and providing, in certain cases, for the suspension of the period for acquiring a prescriptive right to light.

#### The New Courts (Emergency Powers) Act.

TO THESE Statutes must now be added the Act just passed, the provisions of which we stated when the measure was before Parliament (*ante* pp. 294, 537). In the form in which it has been placed on the statute book the effect is as follows:—By section 1 the Act enables building and similar contracts to be suspended where, owing to the war, they cannot be enforced without serious hardship; and the like provision is extended to contracts generally where performance is prevented by the Defence of the Realm Regulations, or acquisition or user of property by the Crown; and also to obligations in connection with certain public utility services. By section 2 relief is afforded in respect of obligations arising under contracts of tenancy, where performance or observance is hindered by the Defence of the Realm Acts or Regulations. By section 3 relief is given in case of contracts (other than contracts of tenancy), where non-fulfilment is due to the requirements of a Government Department, or a competent naval or military authority. Section 4 carries further the permission to take a premium on the grant of long leases, notwithstanding the Increase of Rent, &c., Act, 1915. It repeals section 2 of the Courts (Emergency Powers) (No. 2) Act, 1916, and avoids the necessity of applying to the Court for leave. Section 5 overrides *Sharp Brothers v. Chant* (*ante*, p. 352), and enables a tenant to recover money which he has paid to his landlord beyond the rent allowed by the Increase of Rent, &c., Act; but a time limit of six months is imposed. Section 6 introduces an important limitation to the principal Act, and excludes from section 1 (1) (a) judgments and orders for sums recovered, and costs, in actions of tort. Section 7 varies section 2 (6) of the Increase of Rent, &c., Act, with respect to leases at less than a rack rent, but for the present we prefer not to attempt to give the effect of the variation. Section 8 carries further the special relief to members of H.M. Forces which was given by the Amendment Act, 1916. As to these the relief of section 1 (1) of the principal Act will apply to any sum of money payable under a contract made before joining. And section 9 relieves members of Parliament against certain disqualifications in connection with Government contracts.

#### Attested and Unattested Men.

WHEN GIVING evidence on Tuesday before the Medical Examinations Committee, Mr. MACLEAN, who is well known as chairman of the House of Commons Appeal Tribunal, attacked the conduct of the Recruiting Authorities in distinguishing between attested men and conscripts. His view was that the former are not so well treated under the Recruiting Instructions as the latter. Mr. HERBERT NIELD, K.C., also drew attention to the fact that, in the case of attested men, the Law Courts refuse to entertain jurisdiction over tribunals, no matter how grave the alleged irregularities, and will not grant writs of *mandamus*, &c., against them in such cases: *R. v. Huntingdon Appeal Tribunal, Ex parte Mann* (32 T. L. R. 479). This refusal Mr. MACLEAN describes as "disgraceful." But in fairness to the Recruiting Authorities and the Divisional Court it ought to be pointed out that they have no option in the matter. Attested men enter the Army as enlisted men, subject to the provisions of the Army Act, 1881; therefore the Military Service Acts have nothing to do with them, and the tribunals acting under these Acts have no statutory powers to deal with their claims for exemption. Military Service Regu-

lations made by Order in Council govern the tribunal procedure in the case of conscripts; Army Council Instructions their procedure in the case of attested men. As a matter of fact the Regulations and Instructions are drafted in almost identical terms. But in the case of "attested" men the Military Authorities have refused to let medical appeals be sent as of right before the Special Medical Board.

#### State Compensation for Enemy Damage.

FROM THE account given on another page of the *reception* on the 13th inst. by the Prime Minister of a deputation from the Committee on War Damage it will be seen that the principle that damage from hostile attacks should be borne by the State is at length accepted. We have on various occasions urged that this is the proper mode of dealing with the matter, and at the end of 1915 (59 SOL. JOURN., p. 752), after the Government scheme of insurance had been for some time in operation, we suggested that there were good reasons for exchanging it for one of national liability. It is well known that cases of loss occurred before any general scheme of insurance had been introduced, and litigation has resulted on the question whether existing policies were sufficient: see *R. H. & S. Rogers (Limited) v. Whitaker* (1917, 1 K. B. 942). Moreover, even where a special insurance has been effected, the protection which it affords has led to troublesome questions between the different persons interested in the destroyed property, particularly in the case of lessor and lessee. This was emphasized by the curious position revealed in *Eulayde (Limited) v. Roberts* (*ante*, p. 86; 1917, 1 Ch. 109), and SARGANT, J., suggested that the Government might well adopt a generous view of the matter, so as to give the benefit of the insurance to the persons who really required it. A further reason for State compensation is, that the expense of individual insurance falls only upon persons in districts subject to attack from the sea or air, and therefore operates as a special war tax. However, the justice of these considerations is now admitted, and it only remains for a scheme of compensation to be elaborated. Apparently this will involve the return of premiums already paid, and the assumption by the State of liability to pay fair compensation for damage done by aircraft or bombardment, and also, we gather, personal injury; though we do not know that this last can be said to be definitely admitted.

#### Habeas Corpus and Internment.

A POINT LEFT undecided by the majority decision of the House of Lords in *R. v. Home Secretary, ex parte Halliday* (1917, A. C. 260), came before a Divisional Court in *Ex parte Howson* (Times, 17th July). Regulation 14b of the Defence of the Realm Regulations, we scarcely need remind our readers, enables the Home Secretary to make an internment order against a British subject (or an alien) when, on the recommendation of a competent naval or military authority or of a statutory advisory committee, he considers it expedient to intern such person for the safety of the realm in view of his "hostile origin or association." The validity of this Regulation was upheld in *Ex parte Halliday*. But that case did not decide that the Home Secretary has an absolute discretion to make any internment order he pleases against any person he chooses to consider within the terms of the Regulation; in other words, it did not decide that the Home Secretary can issue a *lettre de cachet* which, once his signature is proved, cannot be questioned in the courts. The Attorney-General, indeed, endeavoured to contend that, in times of war, such an extreme power exists by virtue of the Royal Prerogative, quite apart from the Defence of the Realm Act under which Regulation 14b purports to be made: but the House of Lords did not give any encouragement to this view. They left open the question whether it is possible to bring into a court of law what, on the face of it, appears to be a valid order of the Home Secretary, with a recital that it is made in accordance with the procedure under his statutory powers, and ask the Court to go behind this order by inquiring into its regularity. The answer to this question, no doubt, is in the affirmative. The

Home Secretary, acting under statutory powers of a purely administrative nature to make a preventive, not a punitive, detention order, can be in no higher position than any other executive officer with delegated powers, or an inferior court, in both of which cases the Court will inquire into the regularity and *bonâ fides* of an official act which, on the face of it, appears valid and *intra vires*: *Re Allen* (1860, 3 E. & E. 338). Where the act complained of is judicial, the remedy is by *certiorari*; where executive, *habeas corpus* (Wrottesley, Criminal Appeals, pp. 93, 160, 165). In the present case the Court entertained the application, but, holding that no case had been made out to show any irregularity on the part of the Home Secretary, refused to issue a writ of *habeas corpus*.

#### Workmen's Compensation and Bicycle Accidents.

The *quaestio vexata* of what are and what are not risks incident to a workman's employment, so that, where an accident results from the risk, the workman can claim statutory compensation, has arisen in a very great number of different forms. One of these forms is that known popularly as the "bicycle risk"—*i.e.*, the risk of injury from a street accident incurred by an employee who rides a bicycle when engaged on business for his employer. And on this point an important judgment recently delivered by the House of Lords—*Dennis v. A. J. White & Co.* (*ante*, p. 558)—in which the Lords have overruled the Court of Appeal (Lord COZENS-HARDY, M.R., and PHILLIMORE, L.J., SARGANT, J., *diss.*), will help to settle the law. The facts were simple, and are of all but everyday occurrence. A boy, employed as a plumber's mate, was sent on business errands by his employers, and used a bicycle, kept on their premises, for riding through the London streets on their business about once a day. Upon such an occasion he was the victim of a motor-car collision. The obvious difficulty here is whether one can say that the risk of bicycle accidents in the streets is a special risk incident to the boy's employment, or a general risk of life—a "street" risk—which he runs in common with every other cyclist. In the latter case, he cannot recover statutory compensation, for the risk does not arise "out of" the employment; in the former case, he can. The bicycle cases have been very various and confusing on the point; so it is not surprising that the judges of the Court of Appeal differed among themselves, and that the majority held the risk to be an ordinary risk of life, for which no liability rests on the employer. Neither is it surprising that the House of Lords took the wider view, and held that the risk of collision is inherent in the use of a bicycle in the streets; that the use of a bicycle in the streets was an essential part of the boy's work; and that therefore injury from such a collision was injury from accident arising "out of" his employment for which he can recover.

#### Risk Incidental to Employment.

But the most interesting feature of *Dennis v. A. J. White* (*supra*) is the distinction drawn by Lord FINLAY, C., between a bicycle accident when the employee merely uses a bicycle to get to and from his place of work, and one when he uses the bicycle while engaged on his work. In each case the risk is common to all mankind, not specially incident to the employment. But in the latter case it occurs "in the course of the employment," in the former it does not; and, as Lord PARMOOR put it in *Thom v. Sinclair* (*ante*, p. 350: 1917, A. C. 127), "the fact that the risk may be common to all mankind does not disentitle the workman to compensation if, in the particular case, it arises out of the employment. Now in some cases the mere fact that an accident arises "in the course of" the employment does not indicate that it arises "out of the employment." For example, if a man is killed by lightning or by a murderer, or meets with sunstroke or frostbite while engaged on his work, it by no means follows that his work is in any sense a cause of these fortuitous and unusual injuries; he would probably have suffered from them just the same had he been idle instead of working. Therefore, in such cases as these, the Lord Chancellor points out, one must inquire whether there is any special

exposure to such dangers in the victim's particular employment; and, in the absence of "special exposure," there is no evidence that the accident arose "out of"—*i.e.*, was due to the employment: *Mitchison v. Day Bros.* (1913, 1 K. B. 603); *Weekes v. Stead* (58 SOLICITORS' JOURNAL, 633). But when a workman is sent on his master's business to a locality where the risk of a certain kind of accident exists all the time—*e.g.*, a boy sent to ride a bicycle in the streets—he is obviously exposed to the risk of an accident as a necessary condition of doing his work there at all. The English decisions have hitherto held that in such cases as this last, the number and frequency of the accidents likely to happen is the test whether or not the risk is incidental to the employment; whereas the Scottish cases have taken the simpler view that the existence of a risk at all in obeying his orders entitles a workman to compensation: *Hughes v. Betts* (8 B. W. C. C. 362). The House of Lords has now expressly approved the Scottish view as the correct view.

#### Copyright in a Telegraph Code.

BY THE Copyright Act, 1911, copyright subsists in "every original literary work," and in the Act "literary work," unless the context otherwise requires, "includes maps, charts, plans, tables and compilations." Is a telegraph code an "original literary work," and entitled to copyright? This question arose for decision in *D. P. Anderson & Co. (Lim.) v. Lieber Code Co.* (*ante*, p. 545), and was decided by Mr. Justice BAILHACHE in the affirmative. The plaintiffs had in 1912 published "The Empire Cipher Code," which was a code consisting of five-letter words so constructed that every word differed from every other word in at least two letters. In 1915 the defendants issued a code with five-letter ciphers (two-letter variations), which reproduced the greater part of the five-letter words in the plaintiffs' code. This the plaintiffs alleged to be an infringement of their copyright, and accordingly brought their action. The defendants denied that the plaintiffs' code was an original literary work, as its compilation required no skill, and the words were meaningless. BAILHACHE, J., held that the plaintiffs' code was a proper subject of copyright, and granted an injunction. This is, we believe, the first decision on the point under the new Act, but a similar point arose in 1886 under the then law in *Ayer v. Collingridge* (2 T. L. R. 291), where the plaintiff had published the "Standard Telegram Code," which was a compilation of 100,000 words specially applicable for telegraphic transmission, and the defendants had published "Shadbold's Telegraph Code," which contained some 70,000 of the plaintiff's words, with the additions of interpretations suited for the purposes of the timber trade. KAY, J., held that the plaintiff's code was a proper subject of copyright, and that the defendants had infringed. It appeared that the plaintiff had been, with paid assistants, occupied for four years in producing his code, and KAY, J., in his judgment, commented on its enormous utility as supplying a collection of the aptest words for telegraphic use. This case was considered by BAILHACHE, J., as "some help" to him in coming to his decision in the case before him. We think that it is not stating the matter too broadly to say that any compilation of words which is original *quâ* compilation, although it may not be original in the words compiled, is a proper subject of copyright under the Act of 1911.

#### Ordinary Residence and Military Service.

WHAT IS known as the "ordinary residence abroad" exception in the First Schedule to the first Military Service Act has at last come before the Divisional Court, in *Pittar v. Richardson* (*Times*, 10th inst.). Section 1 (1) of the Act imposes liability to military service on all male British subjects within certain age limits who, at the time of the passing of the Act, were "ordinarily resident" in Great Britain; and section 1 (1) of the second Act extends the liability to all such persons who "for the time being" are "ordinarily resident" in Great Britain. If the matter rested here there would, doubtless, be great difficulty in deciding what nature and degree of residence in Great Britain amounts to "ordinary residence"

within the meaning of the sections. But there is a further complication. The first exception in the schedule excludes from liability persons who, although they satisfy the conditions of liability, including "ordinary residence in Great Britain," are nevertheless "ordinarily resident" in one of His Majesty's Dominions abroad, or resident in Great Britain only for the purpose of education, or for some other special purpose. Now, if these words are to be taken literally, they imply: (1) that a person can have two ordinary residences at the same time, one in Great Britain and one in His Majesty's Dominions (or elsewhere) abroad; and (2) that a person resident in Great Britain, for the purpose of education or some special purpose only, is in fact "ordinarily resident" in Great Britain. Both these classes of persons are to be excluded; but on the ground that their "ordinary residence" in Great Britain is qualified by the other condition named in the exception, not—as is sometimes assumed by justices and practitioners—on the ground that they are "not ordinarily resident" in Great Britain. In other words, "ordinary residence" in Great Britain renders a man *prima facie* liable to service, although he is excused from liability if he can show that such "ordinary residence" here is compatible with the ground of exception in the qualifying paragraph of the Schedule. All this, although the literal interpretation, seems rather strained; but the Divisional Court in *Pittar v. Richardson (supra)* have held that it is the correct interpretation. It is, therefore, not enough for the justices to find that the defendant was "ordinarily resident" in Great Britain at the material times; they must go on to find, in addition, that he was not likewise at the same time "ordinarily resident" in one of His Majesty's Dominions abroad, and not "ordinarily resident" here only for education or some special purpose. In the case of *PITTAR* they found all these facts in evidence, which the Court held sufficient to justify them in the exercise of their judicial discretion as the judges of fact; and so *PITTAR* was fixed with liability. He had been "ordinarily resident" in South Africa until June, 1914, when he came to England for a special purpose, namely, to finance a South African undertaking. But, instead of returning during the war, he remained in England and married an English wife, with intent to return to his home in South Africa after the war was over. The justices found that he had acquired an "ordinary residence" in Great Britain, had put an end to his "ordinary residence" in South Africa, and had changed the special character of his residence here by remaining in England and marrying here: findings of fact which the Court could not disturb. He therefore came within the statutory obligation to serve.

#### Agreement for Future Tenancy of Premises.

AT THIS season of the year, when Londoners seeking change and rest are accustomed to arrange for the tenancy during the autumn of a country house, questions of some nicety sometime arise as to the rights and liabilities of the proposed tenant. We have, however, been surprised to hear that in a case where the tenancy of a dwelling-house for a fixed term *in futuro* has been duly arranged by writing, but the proposed tenant dies unexpectedly before the commencement of the tenancy, it has been contended by the executor that it was part of the bargain that the parties should be excused from the performance of the contract by the death of the would-be occupier of the dwelling-house. The answer is that there was nothing to shew that the contract depended for its fulfilment on the survivorship of either or both of the contracting parties; the representative of the landlord could complete it after his death; the representative of the tenant in expectancy was in a similar position. He could take the benefit of the term for which the testator had agreed to hire the premises, or pay damages for breach of this agreement.

In the House of Commons on Thursday, Mr. Macpherson, answering Mr. Dillon, said the prohibition of the foreign circulation of the *Nation* was still in force, but the matter was now under consideration.

## Soldiers' Tenancies and Emergency Legislation.

A VERY interesting point as to the effect of section 2 of the Courts (Emergency Powers) Amendment Act, 1916, was raised before ASTBURY, J., in *Tozer v. Viola (Times, 14th inst.)*. Under this section any officer or man of His Majesty's Forces who is the tenant of any premises under a tenancy from year to year, or for any longer period, may apply to the county court for leave to determine the tenancy, and the section proceeds:—

and upon any such application being made the Court may, in its absolute discretion, after considering all the circumstances of the case and the position of all the parties, by order authorize the applicant to determine the tenancy by such notice and upon such conditions as the Court thinks fit, and thereupon such tenancy may, notwithstanding any provision in the tenancy agreement or lease, be determined accordingly.

It will be observed that the section speaks only of the tenant and the tenancy, and it does not expressly state what is to be the effect of the determination of the tenancy on other parties who are interested; in particular, what is to be its effect when there has been an assignment of the original tenancy or term. Who in that case is the "tenant" for the purpose of the section—the original lessee or the assignee? And if the assignee is treated as the tenant, what is to be the effect on the liability of the original lessee? It will be remembered that similar questions arose not long ago on section 2 of the Finance Act, 1912, which provided for the apportionment in certain cases between the "grantor" of a lease of licensed premises and the lessee of the increase in the licence duty under the Finance Act, 1910. That section has now, fortunately, been repealed (Finance (No. 2) Act, 1915, s. 18), but it might be supposed that any draftsman dealing with the relation of landlord and tenant would have the singular history of the section fresh in his mind, and would attempt to make the position clear. However, this was not done in the present case, and the point in *Tozer v. Viola (supra)* was whether, where the lease had been determined by the county court at the instance of the soldier assignee, this operated to determine the liability of the original lessee.

Since the effect of the assignment is to vest the term in the assignee, it seems correct to speak of him as the tenant; and certainly this is so where the assignment is with the consent of the lessor, and where he has accepted the assignee as his tenant—where, e.g., he has received rent from him. The question whether the assignor can in any case be "tenant" within the meaning of the Act we need not now inquire. But treating the assignee as tenant, and recognising that the term has been put an end to so far as he is concerned by the order of the county court, what is the effect on the original lessee?

The liability and rights of a lessee after assignment are, of course, well settled. The lessee remains liable to the lessor on his covenant to pay rent, but the assignee also becomes directly liable to the lessor by privity of estate; and as between these two concurrent liabilities, that of the assignee is treated as the primary liability, and, as between themselves, the lessee is only a surety for the assignee; and he is entitled to be indemnified by the assignee, either under the usual express covenant of indemnity or without any such covenant: *Wolveridge v. Steward* (1 Cr. & M., p. 660). If, in those circumstances, the term is put an end to, then rent, as such, ceases to be payable (*cf. Re Jolly*, 1900, 2 Ch. 616), and *prima facie* there is an end of the liability both of lessee and assignee.

In the present case it was sought to avoid this result on the analogy of the cases on disclaimer in bankruptcy. It was held on the Bankruptcy Act, 1869, that, notwithstanding disclaimer by the trustee in bankruptcy of the assignee, the lessee remained liable on his covenant: *Hill v. East and West India Dock Co.* (9 App. Cas. 448), and the later Bankruptcy Acts expressly provide that the rights of third parties shall not be affected (Act of 1893, s. 55 (2); Act of 1914, s. 54 (2)). It was sought to apply the same principle to the Courts (Emer-

gency Powers) Amendment Act, but ASTBURY, J., rejected the analogy and held that since the lessee, if he remained liable, would have his remedy over against the assignee by way of indemnity, the assignee would not be protected, and the object of the Act would be defeated. This is, in effect, the ground on which the liability of a surety for rent was held to be extinguished by disclaimer in *Stacey v. Hill* (1901, 1 Q. B. 660, C. A.). It does not appear from the report that this case was referred to in *Tozer v. Viola*, but in fact it appears to be conclusive on the point. For the protection of the assignee the lease must be determined altogether, and ASTBURY, J., held that this was the result under the Act.

## Acceleration of Remainders.

### II.

Our early authorities on disclaimer, though weighty in authority, are scanty in number. Necessarily so, for livery of seisin was essential to pass to feoffee an estate of freehold when the feoffor was in occupation. No deed was at law necessary for the purpose, but, if a deed of feoffment were used, livery of seisin was the absolute essence of the transaction: Perkins, section 204; Challis, R.P., 2nd ed., 86. But, to deliver, there must be one to accept livery. If there were but one feoffee, and he refused to accept livery, or was legally incompetent to do so as being civilly dead, nothing passed in spite of the deed. We shall not then expect to find cases of disclaimer unless the livery had been to a married woman without her husband's knowledge, to an infant, or to some only of the joint feoffees of the deed.

Thus, should A enfeoff B on condition before such a day to enfeoff C for life, remainder to D; then, if C refused to accept livery, A could re-enter on B's fee for the condition broken, and C was without remedy: Statham, Abr., Condicions (11), citing 19 Hen. 6; cf. *Roundell v. Carver* (2 Sw. 383a, 2 Bro. Parl. Cas. 66). Again, tenant for life at law could surrender to remainderman by mere words. If, then, he says to remainderman "I surrender to you," but remainderman says "I decline," nothing would pass; the remainderman refuses before the estate is in him; this is all that is meant in Perkins, sections 581, 582, 607, 608.

But the whole point of VENTRIS, J.'s dissenting opinion in *Thompson v. Leach* (2 Vent. 198), approved in D.P., which reversed the decisions in the Courts below (*ibid.*, p. 208; see Show. P.C., p. 151), is that tenant for life can by deed of surrender pass his life estate to the remainderman so as to merge the same as from the date of the deed, and that, though remainderman be at the time and for long after wholly ignorant of the existence of the deed. The authority of Litt. (section 685), Coke, 2nd Inst. 286, Statham, Disclaymer (10), Joint Tenancy (12), *Butler & Baker* (3 Rep. 26a, 27a, 29a), Perkins (sections 44, 45); *Mallot v. Wilson* (1903, 2 Ch. 494) is also similarly and clearly to this effect, namely, that an estate can be put into a man surreptitiously. It cannot, of course, be kept in him, against his will, when he finds out; but what is his course of action when he discovers what has been done?

It was reserved till late in the 19th century for the Courts conclusively to determine that he could by deed disclaim a legal estate in possession, and then rather on a principle of convenience than on correct principle: *Tounson v. Tichell* (3 B. & Ald. 31). Lord ELTON asks in *Nicolson v. Wordsworth* (2 Sw., p. 371) "what is the thing called a disclaimer?" Moreover, till well on in the 19th century the disclaimant could disclaim a legal estate in possession only in a Court of Record: Statham, Joint Tenancy (12); Perkins, section 45; *Butler & Baker* (*supra*). Nay, the Chancellor found need himself to affirm that his own Court, a court of equity, was sufficient Court of Record, in which to allow that one of three feoffees to uses (livery having been made to the other two only) who had not assented, might disclaim the legal estate: *Brooke, Conscience* (18), citing 16 Ed. 4. On the other hand a use before the statute, which was a mere equity, or a term of

years—neither of which affected the legal seisin—could be disclaimed by mere word of mouth *in pais*: *Butler & Baker* (*supra*); *Smith v. Wheeler* (1 Vent., p. 130).

Why this necessity for disclaimer in a Court of Record? Because the estate had passed to the donee: to get it out of himself (otherwise than by such disclaimer) he would have to persuade his feoffor to accept livery, a thing he could not compel. Assuming him successful, his very feoffment would have been an acceptance and disposition of the estate which he in truth intended to disclaim: *Crewe v. Dickin* (4 Ves. 96). Can it be doubted that, had the feoffor originally inherited the estate as heir to his mother, by the refeoffment he would have acquired a new estate, which as being a new estate would, under the old law, have become descendible to his heirs *ex parte paterna*? Feoffment and re-enfeoffment was the recognized mode of achieving this object.

A passage in Sheppard's Touchstone by Preston, p. 452, may be misread as asserting that disclaimer avoided the *estate ab initio*. That authority asserts that, if testator devises (a) to his heir in fee simple, or (b) to a stranger for years, life or tail, with remainder to his own heir in fee simple, the heir can waive the devise, take by descent and so void the devise (thus implying that the heir could under the old law, if he wished, claim by devise); but that, (c) if he gives to his heir in tail, remainder to a stranger, the heir is in by purchase and cannot claim by descent, but may disclaim, and then the stranger will be accelerated. The last proposition is obvious: Perkins, section 569; the heir cannot insist on his testator dying intestate.

We may doubt whether proposition (a) was ever law; proposition (b) was probably at one time law, but Watkins, Descent, pp. 229-232, in effect denies it. Before the Inheritance Act the heir could not, as purchaser, take by devise that *quantum* of estate which the law on intestacy would have cast on him by an elder and more dignified title as being given by law; he had to take by descent without election to take by purchase. But assume proposition (b) to have been law, all it amounts to is this, that the heir, having held the remainder as from the testator's death under right by two titles, elects to hold under one title—the elder—the remainder which from the testator's death has been, is, and in spite of the disclaimer, will remain, in him.

Again, if A dispossessed B to the use of C, without C's previous authority, C by ratifying A's wrong would be in *ab initio* of the wrongful fee; by disclaiming the wrong, he would never have been in at all of the wrongful fee. The question is one solely between A acting as agent without authority on behalf of C, an assumed principal, and C; not a question between B and C. It is obvious that A could not, as against C, insist on his being seised to the old equitable use of C, unless and until C ratified the wrong; in other words, A could not insist on being trustee for C, with the consequence of C indemnifying A: there could be no presumption of acceptance by C of A's wrong; consequently, without ratification by C, there would never have been, before the statute, an equitable use in C's favour; consequently the Statute of Uses could not vest the wrongful legal seisin in C.\* This will

\* All the leading propositions under the Statute of Uses, and by the very words of the Statute vesting the legal estate in *vestui que use* for the same interests as he had in the equitable use before the Statute, are based for their very validity on this, that the Chancellor would have allowed of similar equitable uses prior to the Statute as good equitable uses. On this principle depended the validity, in documents operating under the Statute, of good freeholds *in futuro*, shifting and springing uses, conveyance by husband to wife, and to himself and others as joint tenants, and many other principles, such as purchaser for value without notice. There cannot, in fact, apart from special Act (see Conv. Act, 1881, s. 62) be a good legal use under the Statute which before the Statute would not have been good as an equitable use. We believe that we could shew that all the leading positions on the Statute of Uses were established, either at once after the passing of the Statute, as the logical result of equity decisions which we have on record, given before the Statute, or by decisions of those who were living and practising before the Statute. We can shew that before the Statute, common law judges sat continually with the Chancellor, or the Clerk of the Rolls, to assist, or, as we may suspect, supervise and impede his administration of the use.

explain the argument in *Mutton's case* (2 Leon. 223). In a sense as between one of several joint feoffees and his fellows his disclaimer may in effect amount to avoiding his estate *ab initio*, for all joint tenants are seized *per me et per tout*, and in this sense the *dictum* of PARKE, B., in *Doe v. Harris* (16 M. & W., p. 524) may be understood and read in this sense is consistent with Litt., section 685); Coke, 2nd Inst., 283; Statham, Disclaimer (10); Joint Tenancy (12).

We submit we have proved that disclaimer did not avoid the estate *ab initio*; without having hitherto suggested, as we do now, that the onus of proof lies on him who asserts the contrary.

Now to turn to *Re Scott* (1911, 2 Ch. 374) and *Re Willis* (1917, 1 Ch. 365), these are cases of disclaimer of estates—the one legal, the other equitable—arising under *wills not deeds*, a distinction, as we think, of capital importance.

#### A.—LEGAL ESTATES.

*Deeds*.—We have seen that if, at common law, a legal estate was by *deed* given to A for life, remainder to B, and A disclaimed, as the life estate was valid in inception, B's remainder was good, but not accelerated: Fitzherb., *Subpana*, 1; Co. Litt. 298a (latter authority approved, *Wade v. Bach*, Sid. 360), cf. Perkins, section 565; whereas, if the life estate was void in inception, the whole deed was void: Perkins, ss. 567, 568. Now, suppose, after the Statute of Uses A conveys to B and his heirs to the use of C for life, remainder to the use of C's first and other sons in tail, remainder to the use of D in fee; C disclaims before birth of issue; what is the position? D clearly is not accelerated, for before the statute, as the Year Book case, 37 Hen. 6, Trin. pl. 23; Fitzherb., *Abridg. Subpana*; and *Crammer's case* (Dyer, 309a-310a) shew, there would have been a resulting equitable use to the feoffor for the life of C in the case of a feoffment before the statute to similar uses. Consequently, by the very words of the statute (see concluding words of 27 Hen. 8, c. 10, s. 1), there would now be a resulting legal use to the feoffor for C's life. Consequently, at law, a child actually born in C's life would never have been excluded by D; and now, at all events, by Statute (10 Will. 3, c. 20; see Challis, 3rd ed., by Mr. SWEET, 140), a posthumous child of C would not be excluded, apart altogether from the operation of the Acts of 1845 and 1877. See further Fearne Cont. Rem., 25, 40 *et seq.*

*Wills*.—We have seen that in cases of devises for a particular estate, before the Statute of Wills of Hen. 8, of lands deviseable by custom whether for life or in tail, (a) disclaimed, or (b) void in inception, with remainder over (Perkins, ss. 567, 568, 569; Y.B. 37 Hen. 6, Trin. pl. 23; Fitzherb., *Subpana*, 1), the remainder was accelerated in both cases in accordance with the presumed intention of the testator; and in the second case, perhaps, also from fear lest the whole will should be void unless acceleration was allowed. This principle, in case of legal devises, of acceleration of remainders on a particular estate disclaimed (*Crammer's case*, Dyer, 309, 310a; *Re Scott*, 1911, 2 Ch., p. 377; *Newys v. Laska*, Plowd., p. 414; *Fuller v. Fuller*, Cro. Eliz. 422; Shep. Touchstone, 452; Vin. Abr., Remainder C. (2) (2)), or void in inception (*Jull v. Jacobs*, 3 Ch. D. 708; *Re Clark*, 32 Ch. D. 72, as the latter is explained in *Aplin v. Stone*, 1904, 1 Ch., p. 548), has been consistently followed since the Statute of Devises. Indeed, in *Re Townsend* (34 Ch. D. 357), a great judge, without adverting to, or having his attention called to, the distinction between legal and equitable devises, or the earlier authorities on equitable devises, would have applied acceleration in favour of an equitable vested remainder.

[To be concluded.]

In the House of Commons, on Monday, the Chancellor of the Exchequer, answering Mr. Wing, said: The Government has decided that the additional allowance of 2s. 6d. per week shall be payable to old-age pensioners who are entitled under the Old Age Pensions Acts to pensions, whether at the 5s. or lower rate. It will not, however, be payable to pensioners who are not entitled under the Acts to any pension, but whose pensions remain untouched by reason of administrative concessions.

#### Book of the Week.

**Statutes.**—Paterson's Practical Statutes—The Practical Statutes of the Session 1916 (6 & 7 Geo. 5), with Notes, Table of Statutes Repealed and Amended, Lists of Local and Personal and Private Acts, and a copious Index. Edited by W. DE BRACY HERBERT, M.A., LL.M., Barrister-at-Law. The "Field and Queen" Office (Horace Cox) (Limited), "Law Times" Office. 12s. 6d.

#### Correspondence.

##### Bankruptcy Costs.

[To the Editor of the *Solicitors' Journal and Weekly Reporter*.]

Sir,—I have recently raised a point on the question of costs in bankruptcy which may be of interest to your readers, as I was told by the Official Receiver, with whom I raised the question, that it had been raised before, and other solicitors, on hearing his views, have adopted them, and not pressed the question, but he informed me that they had never raised the same grounds of objection to his ruling which were taken by me.

The point in question was whether, when the debtor pays in full and obtains a rescission of the Receiving Order, and the total assets which come to the Receiver's hands do not exceed £300, the petitioning creditor's costs are subject to a reduction of two-fifths, as provided by Rule 103 (2) of the Bankruptcy Rules and Orders, 1914.

In my case the petitioner's debt was about £72, and the petitioner was the only creditor. It is deemed simply contemptuous on the debtor's part that he had not paid before the Receiving Order. He subsequently deposited with the Official Receiver a sufficient sum to discharge the petitioner's debt and the costs of the bankruptcy, and obtained a rescission of the Receiving Order. I carried in my bill for taxation in the usual way, and the Official Receiver attached a certificate to it that the assets did not exceed £300. The Registrar who taxed the bill held that he was bound by the certificate, and so replied to my objections, although he was in sympathy with my argument that the rule in question did not apply to such a case.

Before completing my allocatur, I made inquiry of Master Tanner, the Taxing Master in Bankruptcy of the High Court, and he informed me that, in his view, when the debtor paid in full, there ceased to be a bankruptcy, and the petitioning creditor was therefore entitled to his costs in full, Rule 103 (2) having no application in this case.

I reported this to the Official Receiver, who thereupon laid the point before the Board of Trade, with the result that he was instructed not further to raise his objection, and my costs were allowed and paid in full.

I venture to think that the publication of this letter may cause a uniformity of practice in the High Court and County Court which hitherto has not been the case.

ALFRED DOCKER.

9, Gray's Inn-square, London, W.C. 1.  
18th July, 1917.

#### "Incorporation of Documents made after a Will."

[To the Editor of the *Solicitors' Journal and Weekly Reporter*.]

Sir,—Referring to the article on this subject in your issue of the 19th of May, we should be glad to know whether, in your opinion, a testator who desires future advances to be brought into hotchpot might safely rely upon a direction in his will to that effect, followed by a direction that the figures appearing in his private ledger shall be conclusive evidence as to the amount of such advances.

It would almost seem to follow, from the case of *Henriques v. Deprez*, that the only safe course would be to mention the amount of advances at the date of the will, and to make a codicil each time a further advance is made.

S. Y. & S.

2, Cooper-street, Manchester.  
11th June, 1917.

[This really depends on the mode in which the advances are referred to. If only such advances as are entered in the ledger are to be brought into hotchpot, the entry in the ledger is part of the description or "identification" of the advance, and cannot be used unless in existence at the date of the will, so as to be incorporated in it. This was the case in *Re Deprez* (1917, 1 Ch. 24, see p. 29). If, however, the reference to the ledger is not made part of the description, the entries in it can be used as evidence

of the advances, but not, as we understand the matter, conclusive evidence. In fact, the reference to the ledger is useless, and may be harmful. For without any such reference the ledger is admissible as evidence, and the reference may have the effect of excluding it. If it is desired to make the ledger conclusive evidence, the entry must be in existence at the date of the will, though it is possible that evidence of mistake would still be admissible: see *Re Kelsey* (1905, 2 Ch. 465). The proper course appears to be to omit all reference to ledgers or books, leaving them to have their ordinary effect as evidence; or else to do as our correspondents suggest—make a fresh codicil on each further advance. Of these the former course seems the more practical.—ED. S.J.]

### Estate Duty on Annuities.

[To the Editor of the *Solicitors' Journal and Weekly Reporter*.]

SIR,—I shall be greatly obliged if "Lincoln's Inn" will say what the authorities consider an "Appropriation" of investments sufficient to avoid payment of Estate Duty on the death of an annuitant. Is it necessary that funds should be settled upon trustees for the payment of the annuity, or would it be sufficient for the executor and residuary legatee to direct a company whose stock is to be appropriated to pay the dividends of a specific amount to the annuitant for life?

C. T.

16th July, 1917.

[We have further correspondence, which we are obliged to hold over.]

## CASES OF THE WEEK. Court of Appeal.

**CARLTON MAIN COLLIERY CO. (LIM.) v. CLAWLEY.** No. 1.  
9th May ; 19th June.

WORKMEN'S COMPENSATION—ANY WEEKLY PAYMENT MAY BE REDEEMED—FINALITY OF REDEMPTION—COMPENSATION BY WEEKLY PAYMENT MAKING UP WEEKLY EARNINGS—WORKMEN'S COMPENSATION ACT, 1906 (6 ED. 7, c. 58), s. 1, SCHED. I., CLAUSES 16, 17.

A workman, prior to the date of an accident in 1910, which injured his ankles, earned £1 16s. 4d. per week. The employers admitted liability, and paid him 18s. 2d. per week down to 1913. This payment was made without any agreement being recorded and with no award being made. In October, 1913, an agreement was come to, the terms of which, so far as material, were: (1) that the employers should find him a house near the colliery; (2) light work which he could sit down to do; (3) pay him 8s. 10d. per week by way of compensation, this sum being the difference between what he earned before and was now earning after the accident. The 8s. 10d. was regularly paid until 1917, when the employers applied to be allowed to redeem the weekly payment of 8s. 10d., under section 17 of the First Schedule. The county court judge allowed the redemption of the weekly payment, but made a declaration of liability on the part of the employers to pay further compensation in certain events. The employers appealed from so much of the award as declared them liable to pay further compensation; the workman appealed against the award in so far as it allowed redemption of the weekly payment.

Held, as to the employers' appeal, that the award must be set aside as a redemption of weekly payments under clause 17 of the First Schedule must be final and complete.

Held, as to the workmen's appeal (Banks, L.J., dissentient) on the question whether the weekly payment was capable of being redeemed, that the words "any weekly payment" appeared to mean any weekly payment ascertained by agreement or settled by arbitration to which an applicant was entitled by way of compensation; that while the employers were entitled to apply to redeem the 8s. 10d., the arbitrator ought, before dealing with the application, to afford the workman an opportunity, if he so desired, to review the weekly payments under section 16 of the First Schedule. In the result, therefore, the employers' appeal was allowed, and the workman's appeal dismissed.

Appeal and cross appeal from a decision of his Honour Judge Fossett Lock at Barnsley County Court. The workman met with an accident in 1910, and was paid compensation down to 1917, under circumstances which appear in the head note. The employers then applied to the county court to redeem the weekly payments, on the footing that the man's incapacity was permanent. The application was resisted on two grounds: (1) that the 8s. 10d. a week was not a weekly payment within clause 17 of Schedule I., and was, therefore, not subject to redemption, except by agreement; and (2) that the incapacity was not "permanent" within the meaning of the same clause. The county court judge made an award in the following terms: "I find that the incapacity of the respondent is permanent to the extent at least of the weekly payment of 8s. 10d., which has been paid for over three years. And I order that this payment be redeemed at the fixed rate, which it is agreed will mean a sum of £221 6s. But I make a declaration that that re-

demption is without prejudice to the continuing validity of the remaining terms of the agreement between the parties made in October, 1913, and also without prejudice to any further liability of the applicants (the employers) to pay further compensation to the respondent, if at any time it should be found that the incapacity of the respondent has been diminished below the average weekly earning capacity of £1 7s. 6d. in consequence of the old injury. And I declare that the applicants are so liable accordingly, but subject to the proviso that any further liability of the applicants to pay compensation to the respondent shall not, even in the event of total incapacity, exceed the weekly sum of 9s. 4d., being the difference between the original maximum weekly sum of 18s. 2d. and the weekly sum of 8s. 10d. (part thereof) hereby redeemed." The employers appealed from so much of the award as declared that the redemption was without prejudice to the continuing validity of the remaining terms of the agreement, and to any further liability of the employers as expressed in the award, and so far as it ordered them to pay costs. The workman appealed from the award so far as it ordered redemption. *Cur. ad rult.*

Lord COZENS-HARDY, M.R., in the course of his judgment, said that the employers had applied to redeem a weekly payment under clause 17 of Schedule I., and the county court judge had allowed redemption, but had made a declaration of liability to pay further compensation in certain events. The award had not been supported by counsel on either side. He thought it sufficient on this point to say that the view of the learned judge was inconsistent with the plain language of the statute and with the decisions of this Court. A redemption under clause 17 must be final and complete. The award on that ground being set aside, there arose an important question, whether the weekly payment of 8s. 10d. was capable of being redeemed. The scheme of the Act was that every weekly payment might be reviewed under clause 16. That right could not be limited to the case in which the weekly payment was the total sum of the compensation agreed upon the award. The Act also provided that every weekly payment might be redeemed under clause 17, but only on the application of the employer. That was a privilege conferred upon the employer. His lordship thought it applied to every weekly payment which might be reviewed under clause 16. The combined operation of clauses 16 and 17 enabled a fair result to be obtained in most cases between workmen and employers. If the employer gave notice to redeem a weekly payment which, by change of circumstances, had become too small, it might be possible to give the workman an opportunity to apply for a review under clause 16. If a review was granted, the application for redemption would fail. For example, if the employers had ceased to allow the use of a cottage rent free, it would be obviously unfair to redeem on a basis which excluded the cottage. In the present case, he thought the employers were *prima facie* entitled to redeem the 8s. 10d., but before any such order was made, the workman ought to be afforded an opportunity of applying to review under clause 16. If no such application was made, the learned judge must decide whether the incapacity was permanent or not. If an application to review was made, it would come on with the application to redeem. It might be that Parliament might think it expedient to amend clause 17 so as to get rid of some of the difficulties he had indicated. In the meantime the Court had to administer clause 17 as it stood. As to costs, the workman's application in substance succeeded, and would be allowed, but without costs. The costs in the county court to be dealt with by the county court judge.

WARRINGTON, L.J., gave judgment to the same effect as the Master of the Rolls.

BANKES, L.J., agreed that an order for redemption must be final, and extinguished all claims of the workman to compensation for the particular inquiry in respect of which the weekly payment was made. On the question raised by the workman's cross-appeal, he differed from the opinion expressed by the other members of the Court. The workman contended that the weekly payment he received from his employers was not such weekly payment as was contemplated by clause 17 of the First Schedule. The question appeared never to have been considered by this Court. *Marshall v. Prince* (1914, 3 K. B. 1047) was the case of weekly payments to an infant, and it was not disputed that the weekly payment made to the infant represented the full measure of the compensation he was entitled to at the time of the application to redeem. No doubt it would be a convenient course for the county court judge to allow either party, if he desired it, the opportunity to apply for a review, and to adjourn the application to redeem, but that course would be entirely in the discretion of the judge. In his opinion the case must go back to have it decided whether the weekly payment was one which entitled the employer to an order to redeem, and if it was so held, then whether the incapacity of the workman was permanent. Upon the first question he expressed no opinion except that it was not clear upon the evidence whether the workman was capable of earning the full 27s. 6d. referred to in the agreement. If the first question was decided in the negative, then the learned judge would decide whether to adjourn the application or dismiss it, and that would depend to some extent on whether either party applied to review. Neither the appeal nor cross appeal entirely succeeded, and he thought there should be no order upon the appeal except that the award should be set aside and the case remitted, and neither party should have any costs here or below. As to the construction he, with hesitation, placed upon clause 17, he ventured to think it received some measure of support from the view expressed by Fletcher Moulton, L.J., in *Calico*

*Printers' Association (Limited) v. Higham* (1912, 1 K. B., at p. 103; 55 SOLICITORS' JOURNAL, 89), where he discussed the position of a workman under clause 17. Case remitted.—COUNSEL, for the appellants (the employers), Alexander Neilson; for the respondent (the workman), Dadday and W. Shakespeare. SOLICITORS, Barlow, Barlow, & Lyde, for Wilms-hurst and Stones, Huddersfield; Corbin, Greener, & Cook, for Rodey & Sons, Barnsley.

[Reported by ERASIE REID, Barrister-at-Law.]

## High Court—Chancery Division.

**Re HICKLIN. THE PUBLIC TRUSTEE v. HOARE.** Astbury, J.  
21st June.

**REVENUE—ESTATE DUTY—INCIDENCE—PUBLIC TRUSTEE—WITHDRAWAL FEE**—FINANCE ACT, 1894 (57 & 58 VICT. c. 30), s. 9 (1).

*Under a will there was a trust for sale, and certain immediate pecuniary legacies were to be paid free of duty, and the residue was to be held on trust for the wife for her life, and after her death for such persons as she should appoint, and subject thereto upon trust to pay nine pecuniary legacies, and divide the remainder equally between twelve residuary legatees. The wife made a partial appointment not affecting the nine legatees.*

*Held, that the duty payable on the unappointed funds must be borne rateably by the nine legatees and the ultimate residue, and not wholly by the ultimate residue.*

*Berry v. Gaukroger* (1903, 2 Ch. 116) followed.

*The costs of and incidental to the payment of estate duty and legacy duty and the distribution of the residue, and also the Public Trustee's withdrawal fee, are all costs of distribution to be borne by the residue.*

This was a summons issued by the Public Trustee to determine the question whether certain duty was to be borne rateably by legatees and the ultimate residue of unappointed funds or wholly by ultimate residue; and similarly as to certain costs and expenses of and incidental to (a) the payment of the estate duty, (b) the payment of legacy duty, and (c) the distribution of the residuary trust funds, and also to the withdrawal fee payable under Public Trustee (Fees) Order, 1912, Schedule Part I, clause 2 (see Court Index, 1912, p. cl. xxi.). The facts were as follows:—The testator by his will, dated 29th October, 1908, gave his property on trust for sale, and out of the proceeds called his "residuary trust funds," the trustees were to pay his debts and funeral and testamentary expenses and certain immediate pecuniary legacies given free of duty, and to hold the residue upon trust for his wife for life, and after her decease for such persons as she should by deed or will appoint, and subject thereto upon trust to pay nine pecuniary legacies which were not given free of duty, and to divide the remainder equally between twelve residuary legatees. The testator died in 1909, and in 1911 his widow made her will exercising the power of appointment over a part of the funds, but leaving a considerable portion to go in default of appointment. Her appointment did not affect the nine legatees. She died in 1915, and in 1916 the Public Trustee was appointed sole trustee of the testator's will. As the wife was competent to dispose of the trust funds, estate duty became payable on her death under the Finance Act, 1894, s. 2, sub-section 1 (a). The duty on the appointed funds, even though payable in the first instance by the wife's executors under section 6, sub-section (2), was ultimately thrown on the trust funds by section 9, sub-section (1).

ASTRBY, J., after stating the facts, said: I have come to the conclusion in this case that the pecuniary legacies must bear their proportion of duty. Although the three judges of the Court of Appeal in *Berry v. Gaukroger* (1903, 2 Ch. 116) all based their judgments partly, and Vaughan Williams, L.J., entirely, on section 8, sub-section 1, which only applies to cases where the executor is not accountable, and is not applicable to the present case, the judgments of Romer and Cozens-Hardy, L.J.J., went beyond that and implied that in all cases the charge given by section 9, sub-section 1, falls rateably on the beneficial interests in the property charged, and I must therefore follow that view. As to the other points, the first three items 1 (a) (b) and (c) are ordinary costs of distribution and must be borne by residue. The same consideration applies to the withdrawal fee, which is an expense incurred by the trustee in the distribution of the entire fund.—COUNSEL, Colquhoun Dill; Harman; W. M. Hunt. SOLICITORS, Finnie, Downey, Linnell, & Chesser, for S. W. Page & Sons, Wolverhampton; Cecil John Mercer.

[Reported by L. M. MAY, Barrister-at-Law.]

**LEVY v. GOLDHILL & CO.** Peterson, J. 15th, 18th, 19th, and 26th June.

**CONTRACT—COMMISSION—REPEAT ORDERS—CONTINUANCE OF COMMISSION AFTER CONTRACT TERMINATED.**

"I agree to pay you half profits on receipt of orders . . . the same applies to repeats on any accounts introduced by you."

*Held, (1) that this was an agreement to pay the plaintiff commission on orders whenever received, if they came from customers introduced by the plaintiff.*

*Wilson v. Harper* (1908, 2 Ch. 371) followed.

*Weare v. Brimsdown Lead Co.* (1910, 103 L. T. R. 429) not followed.

(2) That the plaintiff was not entitled to any notice of termination of such an agreement.

*Joynson v. Hunt & Son* (1905, 93 L. T. R. 470) applied.

This was an action for damages for breach of an agreement for share of profits made on all orders and repeat orders, and payment of commission found due. Two questions raised at the trial were, (1) whether the plaintiff's right to a commission in respect of repeat orders continued after the termination of his agreement, and (2) whether the plaintiff was entitled to any and what notice terminating the agreement. The facts were as follows: The plaintiff carried on various businesses of his own, and travelled about the country in connection therewith. He also obtained orders for other firms on commission. In 1915, Shirley Goldhill, trading as Goldhill & Co., wrote him the following letter:—"Dear Sir,—I agree to pay you half profits on receipt of orders (provided the customer is good)"—and here followed a list of prices of sponges, brushes, hardware, etc., upon which the profits were to be based, and the letter continued—"same applies to repeats on any accounts introduced by you.—Yours truly, Shirley Goldhill." Under this agreement the plaintiff obtained and transmitted orders to the defendant. Subsequently a dispute arose between the parties, and the defendant wrote to the plaintiff on 7th March, 1916, requiring him to return his samples, and refusing to allow him to represent him any longer.

PETERSON, J., after stating the facts, and reviewing the cases on both sides, said: This is an agreement to pay half profits on any repeat orders on any accounts introduced by the plaintiff, and having regard to the authorities, I think that the true view is that this is an agreement to pay the plaintiff commission on orders, whenever received, if they come from customers who are introduced by the plaintiff, and I so decide on the first question. On the second question, there has been no attempt to prove any custom as to notice, and I am of opinion that there is no employment in the strict sense of the term at all in the present case. The plaintiff is not the servant of the defendant in any sense, and is not bound to do any work at all, nor is there any obligation on the part of the defendant to provide work for the plaintiff but merely a provision that the defendant would, in certain circumstances, pay certain remuneration to the plaintiff. Applying the decision in *Joynson v. Hunt & Son* (1905, 93 L. T. R. 470), I decide that the plaintiff is not entitled to any notice whatever.—COUNSEL, Hughes, K.C., and E. G. Rand (J. Rutherford with them); Samuel J. Duncan. SOLICITORS, Isadore Goldman; Humphreys, Phillips, & Co.

[Reported by L. M. MAY, Barrister-at-Law.]

**Re LETHBRIDGE. GOULDWELL v. LETHBRIDGE.** Neville, J.  
5th and 6th July.

**SETTLED LAND—INFANT TENANT IN TAIL—ENTRY INTO POSSESSION BY TRUSTEES DURING MINORITY—TITLE DEEDS—GUARDIANS—CONVEYANCING AND LAW OF PROPERTY ACT, 1881** (44 & 45 VICT. c. 41), s. 42.

Section 42 of the Conveyancing and Law of Property Act, 1881, merely gives to trustees of land to which an infant is entitled in possession as tenant in tail a discretion as to whether they shall enter into possession of such land during the minority of such infant, and does not impose upon them any responsibility if they do not enter into possession.

It is not necessary for title deeds of a property of which an infant is tenant in tail in possession to be deposited in the bank in the names of the trustees of the settlement and the guardians of the infant. It is sufficient if they are deposited in the names of the guardians of the infant.

This was an originating summons taken out by the trustees of a will to determine (*inter alia*) whether they should, during the minority of the infant tenant in tail, in exercise of the powers conferred upon them by section 42 of the Conveyancing and Law of Property Act, 1881, enter into possession of the rents and profits of the estate, or allow the infant defendant to remain in occupation of the mansion house; or whether they should let the same, and allow the home farm on the estate to be managed by the guardians of the infant; and also whether, during such minority, the title deeds should be in their possession, or in whose possession on behalf of the infant. The facts were as follows: Certain lands, together with a mansion house, were devised to trustees appointed for all the purposes of section 42 of the Conveyancing and Law of Property Act, 1881, in strict settlement, and in the events which happened the infant defendant, in 1916, became tenant in tail in possession of the lands and the mansion house, and lived in the mansion house with his mother, younger brother and sisters, and it was desired by the family that he should remain in occupation during his infancy. The title deeds of the property had been deposited in the bank in the names of the testamentary guardians of the infant. Section 42 provides that trustees appointed for this purpose during the minority of a person entitled to the possession of the land may enter and continue in possession of such land. Counsel for the trustees said that the trustees, having power to enter under that section, wished to know whether they were under any liability to enter or not.

NEVILLE, J., after stating the facts, said: Under section 42 the trustees can exercise their discretion, and there is nothing in that section to make them responsible if they do not enter into possession of the land. The title deeds ought to remain deposited in the bank in the names of the guardians of the infant, and it is not necessary that they should be deposited in the names of the trustees as well as of the guardians.—COUNSEL, P. F. Wheeler; W. Paley Baldwin; G. W. Brabant. SOLICITORS, Stevenson & Gouldwell; Arthur Hughes & Fripp.

[Reported by L. M. MAY, Barrister-at-Law.]

## King's Bench Division.

**ARMSTRONG v. JACKSON.** McCardie, J. 6th and 13th June.  
PRINCIPAL AND AGENT—FIDUCIARY RELATIONSHIP—EXECUTED CONTRACT—FRAUD—RESCISSON.

Where there is a fiduciary relationship between the parties to a contract, it is not necessary to prove actual fraud in order to have the contract rescinded, even though it is executed; innocent misrepresentation is good ground for rescission.

The plaintiff, on 12th April, 1910, instructed the defendant, a stockbroker, to buy 600 shares in a gold mining company. The shares were carried over, and the differences paid by the plaintiff. The defendant advised him to take up the shares. He did so, and paid the price to the defendant, and took a transfer. In 1915, the plaintiff discovered that the defendant had never purchased any shares for the plaintiff, and that the documents, such as the contango notes, were fictitious, and that the shares transferred were the defendant's own shares. The defendant had been a promoter of the company, and the shares transferred were a portion of the allotment shares received by him. The plaintiff claimed to have the transaction set aside. It was argued (*inter alia*) on behalf of the defendant, that the shares having been transferred, and the agreement executed, rescission could not be granted unless fraud were proved: *Wilde v. Gibson* (1848, 1 H. L. C. 605, p. 632); *Seddon v. North Eastern Salt Co. (Limited)* (1905, 1 Ch. 326, p. 333); and *Angel v. Jay* (1911, 1 K. B. 666; 55 SOLICITORS' JOURNAL, 140).

McCARDIE, J., in the course of a written judgment referring to the above cases, said: When the contract is completed, fraud must be proved before rescission can be granted. Such is the settled rule, and it is too late to regret the limitation which has been placed on the equitable doctrine of rescission on the ground of misrepresentation. In my opinion, however, the rule formulated in *Seddon's case (supra)* has no application to such a case as the present. There the dispute was between vendor and vendee. In *Angel v. Jay (supra)* it was between lessor and lessee. In *Wilde v. Gibson (supra)* it was a dispute between seller and purchaser. In none of these cases did the question of fiduciary relationship arise. Where such relationship exists, the rule is infinitely stricter and more severe. It is immaterial that the plaintiff took a transfer of the shares, and was registered as owner. Such facts do not impair his right to rescission. In *Gillet v. Peppercorn* (1840, 3 Beav. 78), and *Rothschild v. Brookman* (1831, 5 Bligh, N. S. 165), the transactions were set aside, though the contracts were as much executed as in the present case. These and other authorities are quite independent of the proof of actual fraud as defined by *Derry v. Peek* (1889, 14 App. Cas. 337, 38 W. R. 33); they rest upon the fundamental basis of fiduciary relationship, and are wholly unaffected by the opinion of the House of Lords in that case. His lordship found further that the defendant had been guilty of personal deceit; that the plaintiff had not lost his right to rescission by the lapse of time, as there had been no delay after discovery of the facts; and that there could be *restitutio in integrum*, although the shares had depreciated in value. He gave judgment for the defendant, ordering all sums received by the defendant to be repaid with interest at 5 per cent., and the plaintiff to transfer to the defendant the six hundred shares upon such payment.—COUNSEL, Schiller, K.C., and H. G. Robertson, for the plaintiff; Disturnal, K.C.; and Walter Frampton, for the defendant. SOLICITORS, Lovell & White; Hays, Roughton, & Dunn.

[Reported by G. H. KNOTT, Barrister-at-Law.]

**MILLAR & CO. (LIM.) v. OWNERS OF SS. "FREDEN."** Rowlett, J. 2nd July.

SHIPPING—CHARTER-PARTY—CONSTRUCTION—FREIGHT PAYABLE ON "DEAD WEIGHT"—SPECIFIC CARGO MENTIONED IN CHARTER-PARTY—LOWER CUBIC CARRYING CAPACITY OF VESSEL.

A clause in a voyage charter-party guaranteed the ship's dead weight capacity to be a certain number of tons, and the freight was payable on that basis. It was mentioned in the charter-party that the cargo was maize, but it was found that the cubic carrying capacity of the vessel was not equal to that tonnage weight of maize. The charterers sued for a return of the freight paid on the excess weight of the cargo which the vessel could not carry.

Held, that, by the mere mention of the nature of the particular cargo in the charter-party, the shipowners did not warrant the combined lifting and carrying capacity of the vessel in respect of that cargo.

*Mackill v. Wright* (14 App. Cas. 106) considered.

This was an action on a charter-party, made 23rd December, 1915, between the plaintiffs as charterers and the defendants as owners of the steamship *Freden*, for a voyage to Durban to load a cargo of maize in bags for transport to the United Kingdom. The owners by clause 5 guaranteed the ship's dead weight capacity to be 3,200 tons, and freight was to be paid on this quantity. The plaintiffs alleged that the vessel could, and did, not load more than 3,081 tons 560 lbs., and in consequence they suffered damage by payment of £400 for freight on a weight of cargo which the vessel could not carry, and they claimed the return of this amount. The defendants contended that the vessel was fully loaded with the cargo of maize, and that if the weight was less than 3,200 tons this was no breach of the contract, maize not being a dead weight cargo, and the guarantee being only applicable to dead weight cargoes.

ROWLETT, J., said the short question was whether "ship's dead weight capacity" in this charter-party meant her capacity to carry so many tons of maize, or her abstract lifting capacity. If the cargo had been described as "lawful merchandise," the contract would have been simply that freight was to be paid on the dead weight of 3,200 tons, and the nature of the cargo would have had nothing to do with it. Did the mere mention of maize as the cargo to be carried change the meaning into a combined lifting and cubic capacity? He could not adopt that view without authority. *Mackill v. Wright* (14 App. Cas. 106), which had been cited, did not lay down the general rule that the mere mention of the cargo in the early part of the charter-party had the effect contended for by the plaintiffs. The action must be dismissed with costs.—COUNSEL, Mackinnon, K.C., and R. A. Wright, for the plaintiffs; Leck, K.C., and A. Neilson, for the defendants. SOLICITORS, Sturton & Sturton; Botterell & Roche.

[Reported by G. H. KNOTT, Barrister-at-Law.]

## Probate, Divorce, and Admiralty Division.

**BUTLER v. BUTLER.** Div. Court. 6th July.

WIFE'S APPEAL FROM DECISION BY JUSTICES—DESERTION—VENEREAL DISEASE CONTRACTED INNOCENTLY BY WIFE BEFORE MARRIAGE—NO JUST CAUSE FOR HUSBAND'S DESERTION.

Where a wife had contracted syphilis innocently before marriage, and three days after marriage developed the disease, and the husband, with full knowledge of the facts, continued to live with her as his wife, and subsequently left her, after contracting the disease himself, Held, that he had not just cause to leave her, and case was remitted to the justices to find desertion.

This was an appeal from the justices of the borough of Portsmouth, who, on 24th April, 1917, on a summons by the wife against the husband for desertion, held that the husband had good cause for refusing to cohabit with her, on the ground that the wife was suffering from venereal disease contracted before marriage, and which she communicated to the husband, whereby he was compelled to undergo special treatment in a naval hospital. The respondent was not represented. Counsel for the appellant submitted that there was clear evidence of desertion to support the summons. The appellant, Margaret Elizabeth Butler, was married to William Charles Butler, a leading seaman in the Royal Navy, on 18th July, 1916. Three days after the marriage the wife developed a spot on her lip, and on taking medical advice was told that she was suffering from syphilis. The husband accompanied her to see the doctor, and agreed to her undergoing the 606 treatment, which she underwent, and was apparently cured. The husband, with full knowledge of the facts, lived with his wife afterwards for several weeks, and in September, 1916, developed the disease himself. The wife in her evidence swore that she had not been guilty of any immorality before marriage, and there was no suggestion that she had been so guilty. The doctor suggested that she had contracted the disease through drinking out of a dirty cup or through kissing someone. As the disease had been contracted innocently, it was on the same level as any other contagious disease—e.g., small pox or consumption—and the husband in consequence had no right to desert her and leave her without a home or maintenance.

HORRIDGE, J., in delivering the judgment of the Court, said that the wife was suffering from a venereal disease which she had contracted before marriage. She had sworn that she had never misconducted herself, and there was no suggestion that she ever had done so. The question was whether a disease innocently contracted before marriage, from which the wife was suffering after marriage, was any ground for the husband leaving her. He would say nothing as to whether, if the wife had guilty contracted the disease before marriage, that would be a just cause for the husband to leave her. The case would have to go back to the magistrates to find desertion, on the ground that the reason given by the magistrates was not a good reason for the husband's refusal to cohabit. The wife must have her costs.

HILL, J., agreed.—COUNSEL, Talbot Ponsonby. SOLICITORS, Tapp, Blackmore, & Weston, for G. H. King & Frankeiss, Portsmouth, for appellant.

[Reported by C. G. TALBOT PONSONBY, Barrister-at-Law.]

In the House of Commons, on the 12th inst., Lord R. Cecil, replying to Major Hunt, said:—It is true that in the last two years Sweden has exported large quantities of iron ore, wood pulp, and other commodities produced in Sweden to enemy countries. These commodities are the product of Sweden, and when exported to Germany across the Baltic they do not pass through our blockade; but the Allied countries welcome the action of the United States Government taken with a view to prevent such supplies reaching the enemy. I am not aware of any imports into Sweden of these articles during the past eighteen months. Major Hunt asked if the Right Hon. gentleman was aware that the American statement was that some of these materials did come from America, and therefore came by sea, and was it to be understood from the answer that the British Government were really going to take the gloves off at last. Lord R. Cecil: I do not know what the insinuation in the last sentence implies, but I may say that the blockade has been enforced with the utmost power, exerting the full belligerent rights of this country, ever since I have had anything to do with it.

## New Orders, &c.

### New Statute.

7 Geo. 5. c. 25.

COURTS (EMERGENCY POWERS) ACT, 1917.

An Act to amend the Courts (Emergency Powers) Acts, 1914 to 1916, and the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, and to grant relief in connexion with the present war from liabilities and disqualifications arising out of certain contracts.

[10th July 1917.]

Be it enacted, &c. :—

**1. Powers of court to suspend or annul certain contracts.**—(1) Where, upon an application by any party to a contract for the construction of any building or work or for the supply of any materials for any building or work entered into before the fourth day of August, nineteen hundred and fourteen, the court is satisfied that, owing to the prevention or restriction of, or the delay in, the supply or delivery of materials, or the diversion or insufficiency of labour, occasioned by the present war, the contract cannot be enforced according to its terms without serious hardship, the court may, after considering all the circumstances of the case and the position of all the parties to the contract and any offer which may have been made by any party for a variation of the contract, suspend or annul the contract or stay any proceedings for the enforcement of the contract or any term thereof or any rights arising thereunder on such conditions (if any) as the court may think fit.

For the purpose of this sub-section where an offer made before the fourth day of August, nineteen hundred and fourteen, was binding on a contracting party if accepted within a specified period expiring after that date and was so accepted after that date, the contract shall be deemed to have been entered into before that date.

(2) Where, upon an application by any party to any contract whatsoever, the court is satisfied that, owing to any restriction or direction imposed or given by or in pursuance of any enactment relating to the defence of the realm or any regulation made thereunder, or owing to the acquisition or use by or on behalf of the Crown for the purposes of the present war of any ship or other property, any term of the contract cannot be enforced without serious hardship, the court may, after considering the circumstances of the case and the position of the parties to the contract and any offer which may have been made by any party for the variation of the contract, suspend or annul the contract or stay any proceedings for the enforcement of the contract or any term thereof or any rights arising thereunder on such conditions (if any) as the court may think fit.

This sub-section shall apply to any obligation relating to the supply of water, heat, light, traction or power arising under any Act of Parliament, or order having the force of an Act of Parliament, in like manner as it applies to a contract, except that it shall not be lawful for the court to annul any such obligation.

(3) This section shall be construed as one with the Courts (Emergency Powers) Act, 1914 [4 & 5 Geo. 5, c. 78].

**2. Relief in respect of certain contractual obligations.**—Where, by virtue of any contract of tenancy, any person is bound to do or abstain from doing or is under any liability if he abstains from doing or does any act or thing, and by virtue of any enactment relating to the defence of the realm or any regulation made thereunder the doing of such act or thing is wholly or partially restricted or ordered, he shall not, during the continuance of the contract or on or after the termination thereof, be liable to any mandatory order or any injunction or interdict in respect of such act or thing, or be liable to pay any sum of money or incur any forfeiture or other penalty in respect of the failure to do or the doing of such act or thing, if and in so far as the failure to do or the doing of such act or thing is attributable to compliance with such restriction or order as aforesaid:

Provided that the relief afforded by this provision from the obligation to do any such act or thing in consequence of such a restriction as aforesaid shall be subject to the following provisions:—

(a) If the restriction is removed during the currency of the contract the obligation shall be fulfilled as soon as may be after the restriction is removed;

(b) If the restriction has not been removed before the termination of the contract the person to whom the relief is given shall be liable to pay as damages a sum not exceeding the expenditure (if any) which would have been entailed by the fulfilment of the obligation.

**3. Relief from liability when fulfilment of contract interfered with by action of Government department.**—Where, before or after the passing of this Act, the non-fulfilment of any contract (not being a contract of tenancy) was or is due to the compliance on the part of any person with any requirement, regulation, order, or restriction of any Government department or of a competent naval or military authority made, issued, given, or imposed for purposes connected with the present war, or with any direction or advice issued or given by

any Government department with the object of preventing transactions which, in the opinion of the department, would or might be contrary to national interests in connection with the present war, proof of that fact shall be a good defence to any action or proceeding in respect of the non-fulfilment of the contract. A certificate by the appropriate Government department shall be sufficient evidence that such direction or advice was issued or given and with such object as aforesaid.

**4. Power to accept premiums on leases for 21 years or upwards.**—(1) Sub-section (2) of section one of the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, shall not apply to a lease of a dwelling-house for a term of twenty-one years or upwards.

(2) Section two of the Courts (Emergency Powers) (No. 2) Act, 1916 [6 & 7 Geo. 5, c. 18], is hereby repealed.

**5. Provisions as to sums made irrecoverable by 5 & 6 Geo. 5, c. 97.**—(1) Where any sum has, whether before or after the passing of this Act, been paid on account of any rent or mortgage interest, being a sum which by virtue of the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, would have been irrecoverable by the landlord or mortgagee, the sum so paid shall at any time within six months after the date of payment, or, in the case of a payment made before the passing of this Act, within six months after the passing thereof, be recoverable from the landlord or mortgagee who received the payment or his legal personal representative by the tenant or mortgagor by whom it was paid, and may, without prejudice to any other method of recovery, be deducted by such tenant or mortgagor from any rent or interest payable within such six months by him to such landlord or mortgagee.

(2) If any person in any rent book or similar document makes an entry showing or purporting to show any tenant as being in arrear in respect of any sum which by virtue of the said Act is irrecoverable, or if, where any such entry has before the passing of this Act been made by or on behalf of any landlord, the landlord, on being requested by or on behalf of the tenant so to do, refuses or neglects to delete the entry, he shall on summary conviction be liable to a fine not exceeding ten pounds.

(3) This section shall be construed as one with the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915.

**6. Exclusion of judgments in actions of tort from section one (1) (a) of 4 & 5 Geo. 5, c. 78.**—The provisions of section one, sub-section (1) (a) of the Courts (Emergency Powers) Act, 1914, shall not apply to any judgment or order for recovery or payment of any sum of money or costs given or made in any action of tort, or in Scotland in any action of reparation founded on delinquency, whether before or after the commencement of this Act.

**7. Provision as to leases at less than rack rent.**—In sub-section (6) of section two of the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, which relates to tenancies at less than rack rent, the word "standard" shall be omitted, and at the end of the sub-section there shall be inserted the following words "and this Act shall apply in respect of such dwelling-house as if no such tenancy existed or had ever existed."

**8. Application of sub-section (1) of section one of 4 & 5 Geo. 5, c. 78, to officers and soldiers.**—The Courts (Emergency Powers) Act, 1914, shall have effect in favour of officers and men of His Majesty's Forces with the following modification (that is to say)—

Sub-section (1) of section one shall apply to any sum of money due and payable in pursuance of a contract made before the officer or man has joined His Majesty's Forces.

**9. Relief from disqualification for membership of House of Commons in certain cases.**—(1) Whereas by reason of the emergencies of the present war members of the Commons House of Parliament have sometimes been, or may hereafter be, required to supply property to, or to permit the use thereof by, a Government department for purposes connected with the present war, it is hereby declared that none of the provisions of the House of Commons (Disqualification) Act, 1782 [22 Geo. 3, c. 45], or of the House of Commons (Disqualifications) Act, 1801 [41 Geo. 3, c. 52], shall be construed so as to extend to a contract or agreement entered into during the present war as to the price or compensation to be paid for any property so requisitioned or taken or as to any other terms on which any property so requisitioned or taken is to be handed over or supplied.

(2) This section shall not affect any legal proceedings instituted before the twenty-first day of February, nineteen hundred and seventeen.

**10. Short title.**—This Act may be cited as the Courts (Emergency Powers) Act, 1917.

## War Orders and Proclamations, &c.

The London Gazette of 13th July contains the following:—

1. An Order in Council, dated 13th July, 1917, amending the Proclamation dated the 10th day of May, 1917, and made under section 8 of the Customs and Inland Revenue Act, 1879, and section 1 of the Exportation of Arms Act, 1900, and section 1 of the Customs (Exportation Prohibition) Act, 1914, whereby the exportation from the United Kingdom of certain articles to certain or all destinations was prohibited.

2. The Tobacco Restriction Order (No. 2), 1917, dated 11th July, 1917, made by the Board of Trade under Regulations 2*r* and 2*s* of

IT'S WAR-TIME, BUT—DON'T FORGET

THE MIDDLESEX HOSPITAL

ITS RESPONSIBILITIES ARE GREAT AND MUST BE MET.

the Defence of the Realm Regulations. This consolidates and amends the Order and instructions previously in force.

3. The Motor Spirit Restriction Order, No. 1, 1917, made by the Board of Trade, and dated 12th July, 1917. This prohibits the use of motor spirit or motor-vehicles for the purpose of going to or from race meetings. In the Order the expression "motor spirit" has the same meaning as in Part VI of the Finance (1909-10) Act, 1910; and the expression "vehicle" includes a motor cycle.

3. Two Ministry of Munitions Orders, dated 13th July, 1917 (printed below), restricting the use of Creosote, and requiring returns of Creosote to be made.

4. A Notice that the following Order has been made by the Food Controller:—

The Beans, Peas and Pulse (Retail Prices) Order, 1917 (*ante*, p. 529).

5. An Admiralty Notice to Mariners (No. 678 of the year 1917, revising No. 644 of 1917, which is cancelled), relating to England and Wales, South and West Coasts: Portland Bill to Bardsey Island—Traffic Regulations. No vessels other than those of British Nationality or those of the Allied Nations are permitted to enter the Port of Plymouth until further notice.

The *London Gazette* of 17th July contains the following:—

6. A Proclamation, dated 17th July (printed below), changing the name of the Reigning House to Windsor.

7. A Proclamation, dated 17th July (printed below), for continuing certain men of Naval Reserve Forces on active service.

8. A Proclamation, dated 17th July (printed below), prohibiting the Exportation of Designs for Aircraft.

9. An Order in Council, dated 17th July (printed below), extending the Liquor Control "Eastern Area."

10. An Order in Council, dated 17th July, extending to the Isle of Man, with adaptations, the Coroners (Emergency Provisions) Act, 1917.

11. A Foreign Office (Foreign Trade Department) Notice, dated 17th July, 1917, that certain additions or corrections have been made to the list published as a supplement to the *London Gazette* of 18th May, 1917, of persons to whom articles to be exported to China and Siam may be consigned.

12. A Board of Trade Order, dated 13th July (printed below), requiring particulars as to dealings in Motor spirit.

13. A Notice that Orders have been made by the Board of Trade, under the Trading with the Enemy Amendment Act, 1916, requiring two more businesses to be wound up, bringing the total up to 475.

14. A Ministry of Munitions Notice, dated 17th July (printed below), as to Dealings in Pig Iron.

15. Two Army Council Orders, dated 12th and 16th July (printed below), as to Carnauba Wax and Wool.

16. Two Admiralty Notices to Mariners as follows:—

1. No. 699 of the year 1917 (revising No. 482 of 1917, which is cancelled), relating to England, East Coast: River Humber and Approaches—Pilotage and Traffic Regulations.

2. No. 687 of the year 1917 (being a revision of Notice No. 575 of 1917 and a re-publication of Notice No. 648 of 1917) relating to England, South Coast:—

(1) Falmouth Harbour Approach—Light-Buoys established; Traffic Regulations.

(2) Penzance Bay—Light Buoys established; Traffic Regulations.

17. We also print below the following Orders and Notice of the Food Controller:—

1. The Intoxicating Liquor (Output and Delivery) Order, No. 2, 1917, dated 7th July.

2. The Raspberries (Scotland) Delivery Order, 10th July, 1917.

3. Notice as to use of Ice.

4. The Stone Fruit (Jam Manufacturers' Prices) Order, 1917, dated 6th July, 1917.

### Ministry of Munitions Orders.

CREOSOTE AND OTHER OILS PRODUCED FROM THE DISTILLATION OF COAL TAR.

*Ministry of Munitions,*

Whitehall Place,

15th July, 1917.

The Minister of Munitions in exercise of the powers conferred upon him by the Defence of the Realm Regulations and all other powers thereto enabling him hereby orders as follows:—

(1) For the purposes of this Order the expression "creosote" shall mean creosote, green oil, sharp oil, and any oil produced from or containing an admixture of oil produced from the distillation of coal tar, or any of them.

(2) No person shall as from the date hereof until further notice, except under and in accordance with the terms of a licence issued under the authority of the Minister of Munitions, use any creosote (whether as a solvent or otherwise) or in connection with—

(i) The water-proofing preservation, or treatment of timber or wood of any kind or description.

# ROYAL EXCHANGE ASSURANCE.

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(ii) The manufacture, repair, preservation or treatment of any road or path in the United Kingdom, or any part of such road or path.

(3) No person shall as from the date hereof until further notice offer to sell, sell or, except for the purpose of carrying out a contract in writing existing prior to such date for the sale of creosote, enter into any transaction or negotiation in relation to the sale of creosote, except under and in accordance with the terms of a licence issued under the authority of the Minister of Munitions.

(4) All applications for licences under this Order shall be made to the Director-General of Munitions Supply, Ministry of Munitions, Whitehall Place, London, S.W. 1, and marked "Creosote Licence."

*Ministry of Munitions.*

15th July, 1917.

The Minister of Munitions, in exercise of the powers conferred upon him by the Defence of the Realm Regulations and the Munitions of War Acts, 1915 and 1916, hereby orders and requires that all users or consumers of Creosote Oil, Green Oil, Sharp Oil, Anthracine Oil or other oils with a specific gravity of 1·000 or more, distilled from Coal Tar, and all oils with a specific gravity of .950 or more distilled from other Tars, shall within fourteen days of the date of this Order furnish to the Controller of Mineral Oil Production, M.P.S. 3, 8, Northumberland Avenue, London, W.C. 2, the following particulars:—

(1) The source or sources from which their present supply is obtained.

(2) The quantities of such oils used or consumed by them from 1st January, 1917, to 30th June, 1917.

(5) The quantities of such oils which it is anticipated will be used or consumed by them from 1st July, 1917, to 31st December, 1917.

(4) Full details of the purposes for which such oils have been or are intended to be used or employed.

### A Proclamation

DECLARING THAT THE NAME OF WINDSOR IS TO BE BORNE BY HIS ROYAL HOUSE AND FAMILY AND RELINQUISHING THE USE OF ALL GERMAN TITLES AND DIGNITIES.

GEORGE R.I.

Whereas We, having taken into consideration the Name and Title of Our Royal House and Family, have determined that henceforth Our House and Family shall be styled and known as the House and Family of Windsor:

And whereas We have further determined for Ourselves and for and on behalf of Our descendants and all other the descendants of Our Grandmother Queen Victoria of blessed and glorious memory to relinquish and discontinue the use of all German Titles and Dignities:

And whereas We have declared these Our determinations in Our Privy Council:

Now, therefore, We, out of Our Royal Will and Authority, do hereby declare and announce that as from the date of this Our Royal Proclamation Our House and Family shall be styled and known as the House and Family of Windsor, and that all the descendants in the male line of Our said Grandmother Queen Victoria who are subjects of these Realms, other than female descendants who may marry or may have married, shall bear the said Name of Windsor:

And do hereby further declare and announce that We for Ourselves and for and on behalf of Our descendants and all other the descendants of Our said Grandmother Queen Victoria who are subjects of these Realms, relinquish and enjoin the discontinuance of the use of Degrees, Styles, Dignities, Title and Honours of Dukes and Duchesses of Saxony and Princes and Princesses of Saxe-Coburg and Gotha, and all other German Degrees, Styles, Dignities, Titles, Honours and Appellations to Us or to them heretofore belonging or appertaining.

17th July.

### A Proclamation

FOR CONTINUING IN ACTUAL SERVICE MEN OF THE ROYAL NAVAL RESERVE AND ROYAL FLEET RESERVE, AND OFFICERS AND MEN OF THE ROYAL NAVAL VOLUNTEER RESERVE.

GEORGE R.I.

Whereas by the fifth section of the Royal Naval Reserve (Volunteer) Act, 1859, it is enacted that it shall be lawful for Us in case We see fit on any emergency by Proclamation to declare that such volunteers under that Act as may at the date of such Proclamation be in actual service shall continue in such actual service for the period of five years from the date of their respectively coming into actual service, if their services be so long required:

And whereas by the Naval Reserve Act, 1900, the Admiralty are authorized to raise and keep up a new division, commonly known as the Royal Fleet Reserve, of the force raised under the said first recited Act in addition to the men raised under that Act, and it is provided that certain provisions of the said Act of 1859 including the fifth section of that Act, shall apply to the force so raised:

And whereas by the Naval Forces Act, 1903, the Admiralty are authorized to raise and maintain a force to be called the Royal Naval Volunteer Reserve:

And whereas by the Royal Naval Volunteer Reserve Act, 1917, it is provided that the power under section five of the Royal Naval Reserve (Volunteer) Act, 1859, for His Majesty on any emergency by Proclamation to declare that such volunteers as may at the date of such Proclamation be in actual service shall continue in such actual service for a period of five years from the date of their respectively coming into actual service if their services be so long required, shall, during the continuance of the present war, notwithstanding anything in section one of the Naval Forces Act, 1903, extend to the Royal Naval Volunteer Reserve as it extends to the Royal Naval Volunteers:

We do, by this Our Proclamation, order and direct that in the present emergency such volunteers under the said Acts as are in actual service shall continue in actual service in accordance with the provisions of the Royal Naval Reserve (Volunteer) Act, 1859.

17th July.

### A Proclamation

PROHIBITING THE EXPORTATION FROM THE UNITED KINGDOM OF DESIGNS FOR AIRCRAFT.

(Recitals.)

Now, therefore, We, by and with the advice of Our Privy Council, in pursuance of the said Acts and all other powers enabling Us in that behalf, do hereby proclaim, direct, and ordain as follows:—

As from and after the date of this Proclamation the exportation from the United Kingdom of the following articles, that is to say, drawings, designs, specifications, and other descriptions in writing of any kind of aeroplanes or other aircraft, or of engines, or other accessories of aircraft, shall be prohibited:

Provided that nothing herein contained shall apply to any such articles exported under and in pursuance of any licence in that behalf granted by the Air Board.

17th July.

### Extension of Eastern Area (Liquor Control).

#### ORDER IN COUNCIL.

(Recitals.)

Now, therefore, His Majesty is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered, as follows:—

The Defence of the Realm (Liquor Control) Regulations, 1915, and any Regulations amending the same, shall be, and are hereby, applied to the area defined and specified in the Schedule hereto.

#### SCHEDULE.

The Eastern Area, being the area comprising the County Borough of Southend-on-Sea and the County of Essex (excepting such part thereof as is comprised in the London Area, as defined and specified in the Schedule to an Order in Council dated the 24th day of September, 1915); the County Borough of Ipswich and the County of East Suffolk; the City of Norwich, and the County Borough of Great Yarmouth, and the Petty Sessional Divisions of Holt, Kynsford, Forehoe, Depwade, Diss, North Erpingham, South Erpingham, Taverham, Swainsthorpe, Earsham, Turstead, and Happing, East and West Flegg, Blofield and Walsham, and Loddon and Clavering, in the County of Norfolk; the County of Hertford (excepting such part thereof as is comprised in the London Area aforesaid); the Petty Sessional Divisions of Chesham and Burnham (excepting the Parishes of Farnham Royal, Burnham, Taplow, Hitcham, Dorney, and Boveney), in the County of Buckingham; and the Parishes of Shillington, Upper Standon, Meppershall, Campton, Shefford, Shefford Hardwick, Clifton, Henlow, Langford, Arlesey, Astwick and Stoford, in the County of Bedford, and so much of the Parish of Southill in the said County as lies within the circumference of a circle having a radius of five hundred yards measured from the Railway Station at Shefford.

17th July.

### Motor Spirit.

#### BOARD OF TRADE ORDER.

In pursuance of their powers under Regulations 15A and 2G of the Defence of the Realm (Consolidation) Regulations, 1914, the last-mentioned of which Regulations is hereby applied to motor spirit, the Board of Trade do hereby order and require every person who uses or keeps motor spirit and is for the time being a licensed dealer in motor spirit to supply to the Board particulars as to purchases, sales, deliveries, appropriations and stock-in-hand of motor spirit in such form and at such intervals as may be required.

Unless otherwise ordered the information hereby required shall be sent to the Petrol Control Department of the Board.

If any person fails to comply with this Order or knowingly gives any false information, he is guilty of a summary offence against the Defence of the Realm (Consolidation) Regulations, 1914.

W. F. MARWOOD,  
A Secretary of the Board of Trade.

### Notice of Modification of General Permit as regards Dealings in Pig Iron.

*Ministry of Munitions,*

17th July, 1917.

With reference to the Order made by the Minister of Munitions on the 7th July, 1916 [60, SOLICITOR'S JOURNAL, p. 623], applying Regulation 50A of the Defence of the Realm Regulations to war material consisting of certain classes and descriptions of metallurgical metal, coke, pig iron and steel, and to the General Permit for dealing in such war material issued by the Minister of Munitions on the 1st November, 1916 [ante, p. 73], the Minister of Munitions hereby gives notice

(1) That the said General Permit is modified by the insertion in the Schedule thereto of the following prices for the articles hereunder specified in addition to or, where such articles are already specified in such Schedule, in substitution for the prices contained in such Schedule.

[Schedule of Maximum Prices.]

### Army Council Orders.

CARNAUBA WAX.

*War Office,*

11th July, 1917.

In pursuance of the powers conferred upon them by the Defence of the Realm Regulations, notice is hereby given that it is the intention of the Army Council, to take possession of all stores of the following class and description, that is to say:—

All stocks of Carnauba Wax, excepting stocks of less than two tons, that are at present or may hereafter arrive in the United Kingdom.

If after this notice any person having control of any such stores, sells, removes, or secretes them without the consent of the Army Council, or deals therewith in any way contrary to any conditions imposed in any licence, permit, or order that may have been granted in respect thereof, he shall be guilty of an offence against the said Regulations.

All persons having in their custody or control any such stocks are hereby required to make a return thereof, with full particulars of quantity, description, and cost price, to Director of Army Contracts, Imperial House, Tothill-street, Room 79, S.W. 1, together with all such further and other particulars as to their business as may be required by or on behalf of the Director of Army Contracts.

By Order of the Army Council,  
R. H. BRADE.

### WOOL.

*War Office,*

16th July, 1917.

Whereas by the Wool (Restriction of Consumption) Order, 1917, the Army Council regulated the hours of work in certain factories:

And whereas the said Order was amended by Orders of the Army Council dated the 5th June, 1917, and 9th June, 1917:

And whereas it is expedient to amend the said Order in the manner hereinafter appearing:

Now, therefore, the Army Council, in pursuance of the powers conferred upon them by the Defence of the Realm Regulations, hereby Order that the following amendments be made in the said Order:—

1. In clause 5, there shall be inserted after the words "amounted to 554 hours" the words "or more."

2. After clause 7, the following new clauses shall be inserted:—

8. In any textile factory, the business carried on in which consists wholly or partly in the combing of Merino wool, the weekly hours of work on combing such Merino wool shall not, except under permit issued by or on behalf of the Director of Army Contracts, include, after the fourteenth day of July, 1917, any hours of work on any Monday or Monday night, provided that nothing herein contained shall apply to re-combing.

9. In any textile factory, the business carried on in which does not consist wholly or partly, at the date hereof, in the combing of Merino wool, no Merino wool shall be combed.

"10. In any textile factory, the business carried on in which consists wholly or partly in the combing of Merino wool, those combs engaged at the date hereof on Merino wool shall not manipulate any wool other than Merino."

By Order of the Army Council,  
R. H. BRADE.

### Food Orders.

#### THE INTOXICATING LIQUOR (OUTPUT AND DELIVERY) ORDER No. 2, 1917.

In exercise of the powers conferred upon him by Regulations 2*r* and 2*s* of the Defence of the Realm Regulations, and of all other powers enabling him in that behalf, the Food Controller hereby orders as follows:—

1. *Increase of Maximum Barrelage.*—During the quarter commencing on the 1st July, 1917 (hereinafter referred to as the current quarter), the maximum barrelage which a brewer for sale is authorized to brew under the Intoxicating Liquor (Output and Delivery) Order, 1917 (hereinafter referred to as the principal Order), shall be increased:

(a) By twenty per cent. if he gives such notice and complies with such conditions as are hereinafter mentioned, and such increase is, in this Order, referred to as the twenty per cent. increase; and

(b) By such further amount, if any, as in his case may be authorized by licence of the Food Controller if he complies with the conditions subject to which such a licence is granted, and the increase authorized by such licence is hereinafter called "the licensed increase":

Provided that the aggregate amount of the licensed increases shall not exceed such an amount as with the aggregate amount of the twenty per cent. increases will increase the aggregate barrelage to be brewed by all brewers for sale in the current quarter by more than thirty three and one-third per cent.

2. *Accepting brewers.*—A brewer for sale shall be authorized to brew in the current quarter the twenty per cent. increase if he gives notice to the commissioners of Customs and Excise (hereinafter referred to as the Commissioners) on or before the 21st July, 1917, that he accepts and will comply with the conditions subject to which the twenty per cent. increase is authorized by this Order, and such brewer is herein-after referred to as an accepting brewer.

3. *Conditions.*—The conditions subject to which the twenty per cent. increase is authorized are the following:—

(a) One-half of the total amount of beer brewed by the accepting brewer in the current quarter (exclusive of the licensed increase) shall be brewed and delivered out of his brewery at a gravity not exceeding an original gravity of 1036°:

(b) The remaining half of the beer brewed (exclusive of the licensed increase) shall be brewed at an average original gravity not exceeding the average original gravity of the total beer brewed at his brewery during the quarter commencing on the 1st July, 1916:

(c) In the month of July not more than one-third and in the months of July and August not more than two-thirds of the total amount of beer which the brewer is entitled to brew during the current quarter (exclusive of the licensed increase) shall be delivered out of his brewery:

And it shall be the duty of every accepting brewer to comply with such conditions.

4. *Computation under Clause 2 (1) of the Principal Order Contracts.*—The additional barrelage authorized to be brewed by this Order and by licences under this Order shall not be taken into account in reckoning the ten million barrels referred to in sub-section (2) of Clause 1 of the principal Order.

5. *Contracts.*—The same provision shall be applicable in relation to the effect of this Order on contracts as is applicable in relation to the effect of the Output of Beer (Restriction) Act, 1916, on contracts under Section 4 of that Act.

6. *Supply of Beer to Free Licensed Houses.*—The following provisions shall apply with respect to certificates available for the current quarter granted or to be granted to a licence holder:—

(a) Except under the authority of the Food Controller a certificate granted by an accepting brewer shall not during the current quarter be used to transfer barrelage to a person who is not an accepting brewer.

(b) The number of standard barrels which a licence holder may obtain from an accepting brewer under a certificate shall be increased by 20 per cent.

(c) An accepting brewer who has undertaken to supply the licence holder with beer under a certificate shall not supply more than one-half of such beer at a gravity exceeding an original gravity of 1036°.

(d) This clause shall apply to persons having the same rights as licence holders in the same way as it applies to licence holders.

7. *Gravity of Beer.*—If any question shall arise under this Order as to the average original gravity of beer such question shall be determined by the Commissioners.

8. *Records.*—Every accepting brewer shall keep such records as to gravity and amount of beer brewed and delivered and other matters as are requisite to determine whether or not the provisions of this Order are being complied with, and all such records and documents connected therewith shall at all times be open to the inspection of the Food Controller and of the Commissioners.

9. *Surplus barrelage.*—No account shall be taken of any surplus

### EQUITY AND LAW

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18, LINCOLN'S INN FIELDS, LONDON, W.C.

ESTABLISHED 1844.

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barrelage accrued during the quarter commencing the 1st April, 1917, for the purpose of computing the increase permitted by Clause 1 of this Order or for the purpose of Clause 3 of this Order.

10. *Infringements.*—Infringements of this Order are summary offences against the Defence of the Realm Regulations.

11. *Title and Construction.*—This Order may be cited as the Intoxicating Liquor (Output and Delivery) Order No. 2, 1917, and shall be read as one with the principal Order.

By Order of the Food Controller.

U. F. WINTOUR,

Secretary of the Ministry of Food.

7th July, 1917.

### The Raspberries (Scotland) Delivery Order, 1917.

In exercise of the powers conferred upon him by Regulation 2*r* of the Defence of the Realm Regulations, and of all other powers enabling him in that behalf, the Food Controller hereby orders as follows:—

1. *Scotch Raspberries to be delivered to the Food Controller.*—Any contract to the contrary notwithstanding all raspberries grown in Scotland shall, as picked, be delivered to the Food Controller by the grower in accordance with the instructions of a person nominated for the purpose by the Food Controller, and such raspberries when so delivered shall become the property of the Food Controller and will be paid for as to raspberries in good condition at the maximum prices applicable to raspberries under the Raspberries (Manufacturers' Prices) Order; and no raspberries grown in Scotland shall be delivered to any other person or on any other terms except under and in accordance with the terms of a licence granted by the Food Controller.

2. *Exception.*—This Order shall not apply to a grower of raspberries whose total crop does not exceed 1 cwt.

3. *Penalty.*—Infringements of this Order are summary offences against the Defence of the Realm Regulations.

4. *Title.*—This Order may be cited as the Raspberries (Scotland) Delivery Order, 1917.

By order of the Food Controller.

U. F. WINTOUR,

Secretary to the Ministry of Food.

10th July, 1917.

The Food Controller has issued a statement that under the above Order the first claim on the fruit will be for the manufacture of jam for the Navy and Army, but it is anticipated that unless the crop proves abnormally small there will be a surplus available for private trade. It is proposed to arrange for the equitable distribution of this surplus to jam manufacturers, and a manufacturer who wishes to buy any of this surplus should send immediately to the Ministry of Food an application stating (a) the amount of Scottish raspberries that he requires, and (b) the amount of raspberries purchased by him in each of the years 1914 and 1915 from (i) Scotland, and (ii) all other parts of the United Kingdom. The price to be paid for these raspberries will be the maximum price permissible under the Raspberries (Manufacturers' Prices) Order, subject to any revision of that price which the Food Controller may hereafter authorise if, after the crop has been gathered, it appears that the present maximum price is not such as will yield the growers a reasonable profit.

13th July, 1917.

### Use of Ice.

#### NOTICE.

The Food Controller desires to call attention to the necessity for strict economy in the use of ice, both by traders and by others. The importation of natural ice, by which the home supplies of artificial ice have in past years been supplemented, cannot be maintained at its former level. It is necessary, therefore, that the smaller total supplies

of ice should be used to the best advantage, with a view to preserving perishable foods which might otherwise be wasted, and should nowhere be used for purposes of display or unnecessarily.

16th July, 1917.

### The Stone Fruit (Jam Manufacturers' Prices) Order, 1917.

In exercise, &c., the Food Controller hereby orders that, except under the authority of the Food Controller, the following provisions shall be observed by all persons concerned:—

1. *Maximum Price for Stone Fruit bought by Jam Manufacturers.*—A person who for purposes of sale manufactures jam, or bottles or otherwise in any form preserves fruit (hereinafter called a jam manufacturer) shall not after the date of this Order by himself or his agent buy or agree to buy for the purposes of such manufacture or preserving any fruit of the varieties mentioned in the Schedule at a price exceeding that specified as applicable thereto or pay to the seller or his agent in respect of such fruit any charges other than those permitted under this Order.

2. *Picking and Packing.*—The price specified shall in all cases include all charges for picking and packing.

3. *Prices to be f.o.r. or f.o.b. Prices.*—Where the fruit is bought to be placed on rail, ship or barge at the grower's station, port or wharf, the specified price in such case is the price, free on rail, ship or barge.

4. *Permitted Additional Charges.*—The additional charges permitted under this Order are:—

(a) Where the fruit is delivered by the seller to the purchaser's premises, or for sale in a market, the customary charges in respect of such delivery, not exceeding in any case an amount equal to the reasonable cost of transport from the grower's railway station, port or wharf to the purchaser's premises or the market where sold.

(b) For the use of baskets or usual packages (other than sacks) a charge not exceeding the rate of 25s. per ton of fruit.

(c) All market tolls actually paid in respect of the fruit.

5. *Agents' Commission.*—Where a jam manufacturer employs an agent in the purchase of any fruit to which this Order applies, he shall not pay to such agent a commission or other remuneration exceeding 12s. 6d. per ton of such fruit bought through the agent.

6. *Burden of Proof.*—Where any fruit to which this Order applies is bought by or on behalf of a jam manufacturer, such fruit shall until the contrary be proved be deemed to be bought for the purpose of manufacturing jam or preserving fruit for sale.

7. *Offers.*—A person shall not knowingly sell or offer to sell to a jam manufacturer for the purpose of manufacturing jam or preserving fruit for sale any fruit to which this Order applies at a price or subject to a charge not permitted under this Order.

8. *Fictitious Transactions.*—A person shall not in connection with a purchase or disposition or proposed purchase or disposition of any fruit to which this Order applies enter or offer to enter into any fictitious or artificial transaction.

9. *Exclusion from Order.*—This Order shall not apply to any fruit grown outside the United Kingdom.

10. *Penalty.*—Infringements of this Order are summary offences against the Defence of the Realm Regulations.

11. *Title.*—This Order may be cited as the Stone Fruit (Manufacturers' Prices) Order, 1917.

RHONDDA,  
Food Controller.

6th July, 1917.

### THE SCHEDULE.

Variety of Fruit.	Price at Rate per Ton.
	£ s. d.
Egg plums	10 10 0
Other plums	12 10 0
Farleigh or Kent damsons	12 0 0
Pin, or prune or other damsons	14 0 0
Greengages	22 0 0

Memorandum (see ante p. 529) that the Local Authorities (Food Control) Order (No. 1), 1917, is to apply to the above Order.

### Societies.

#### The Grotius Society.

At a meeting of the society on the 10th inst., Sir Malcolm McIlwraith, K.C., read a paper on "Legal War Work in Egypt," which dealt with the various problems of the administration in Egypt after the outbreak of war, particularly those concerned with international law. Among those present were Professor Goudy (in the chair), Sir John Macdonell, Dr. E. J. Schuster, Mr. G. G. Phillimore, Dr. Bisschop, Mr. de Montmorency, and Dr. Bellot, the hon. secretary.

### Law Association.

The usual monthly meeting of directors was held on the 5th July, Mr. Nugent Chaplin in the chair. The other directors present were Mr. T. H. Gardiner and Mr. Spencer Whitehead (treasurers), Mr. S. H. Hargrove, Mr. C. F. Leighton, Mr. P. E. Marshall, Mr. W. P. Richardson, Mr. W. M. Woodhouse, and the secretary, Mr. E. E. Barron. £144 was voted in relief of deserving applicants and other general business transacted.

### State Compensation for Enemy Damage.

A deputation from the Committee on War Damage, was received by the Prime Minister, at 10, Downing-street, at 5 o'clock on Friday, the 13th inst. Mr. Lloyd George was accompanied by Lieutenant-General Sir David Henderson, Director-General of Military Aeronautics, Lieutenant-General Smuts, and Dr. Addison, Minister of Munitions. The deputation included the Lord Mayors of London, York and Hull, and the Mayors of Folkestone, Margate, Ramsgate, Tynemouth, and Walsall.

The Lord Mayor of London, in introducing the deputation, said:—Mr. Lloyd George, I have the honour to introduce to you a deputation, representing no fewer than 718 municipal and other local authorities in the United Kingdom, as well as Chambers of Commerce and other corporate bodies. They desire to urge upon the Government the necessity of providing, out of national funds, the compensation of those who have suffered damage from the air and other attacks of the enemy. When I tell you that they represent a population of over twenty-eight millions of our fellow-countrymen, I am sure you will hear what they have to say with that considerate attention which you have always shewn to the wishes and demands of the community. The matter has recently increased in urgency and gravity by those deplorable air raids on London and some of the provincial towns, which have occasioned many hundreds of deaths and casualties among the civilian population, the majority being women and children.

Mr. Mark H. Judge, the chairman of the Committee, handed the Memorial to the Prime Minister, and said: My duty is simply to read a short extract from the memorial:—

"Although the Government scheme only came into force on the 19th of July, 1915, immense losses and great hardships have been suffered in many districts, and it seems to your memorialists exceedingly unfair that these should not be borne by the nation; and notwithstanding the fact that the withdrawal of the scheme would now involve a considerable expense in the first instance, it is yet, for the reasons stated above, highly desirable that the Government should retrace their steps in the matter, repay the premiums already received, and, as trustees for the nation, proclaim their intention of giving fair compensation to the owners of property and goods that have already been, or may in future be, damaged or destroyed either by aircraft or bombardment. This, in the opinion of your memorialists, is the manifest duty of the Government, and one which they are bound by every consideration of justice expediency, and public policy, to recognise and carry into effect."

Many municipal authorities, while endorsing the memorial, expressed themselves as anxious to urge upon the Government the claims of those who have suffered personal damage; and, in the opinion of the Executive Committee, loss of life or personal injury due to enemy air raids or bombardment ought to engage the attention of and be dealt with by the Government. The claim for compensation in such cases is at least as strong as that arising out of casualties in the fighting line. There is no Government insurance scheme to deal with such cases, and the Executive Committee earnestly hope that such claims will, as a matter of course, be duly recognised by the Government."

The Lord Mayor of York, president of the Committee, after narrating the growth of the movement among local authorities in favour of State compensation, said: As members of local authorities we have very serious anxieties in this matter, and those we represent look to us to see that they have protection. In our own local work we are responsible to the ratepayers in cases of injury or damage from local riots, and the law admits of no excuse. It seems to us that the same principle should apply in our national affairs. We pay taxes for the Army and Navy in the same way as our constituents pay rates for the police force. Local Governments are rightly responsible when this force fails, and we urge that the National Government should be responsible for results due to causes which are intended to be met by the Army and Navy. Your Government has already made an important change in policy with regard to compensation for war damage by agreeing to make awards in aid in certain cases of personal injury, and this encourages us to hope that the full prayer of our memorial will be granted by the Government accepting full and unqualified responsibility for damage and injury arising out of the defence of our country from the attacks of the enemy.

The Mayor of Walsall, Ramsgate and Tynemouth spoke with reference to the damage done in their districts, the Mayor of Ramsgate saying:—

Ramsgate being the nearest port to the firing line, it goes without question that we must be, and we have been weekly almost, suffering

from air raids and bombardments. A large number of people, of course, have been badly hit, and the raid of the 16th-17th June caused damage to the extent of over £37,000 to buildings, without alluding to poor people's furniture and traders' stocks. Undoubtedly, the claims of those who have been insured against aircraft and bombardment will be paid up, but those who have lost through not being insured have no means of getting any reparation whatever. The position with us is very, very keen indeed. We have something like 2,000 empty houses in Ramsgate to-day, and the people are going out in shoals. We have had no season, our fishing fleet has been damaged and largely destroyed, and we are absolutely on the rocks. The town generally are placing the greatest confidence in this deputation to-day, and are looking to you with the greatest confidence to ameliorate their position and accede to the request of the memorialists. You will quite understand, Mr. Lloyd George, that I am speaking now on behalf, not only of Ramsgate, but of the whole of the Isle of Thanet, which is a considerable area.

The principle of national responsibility which this Committee urges the Government to recognize has in its favour the fact that the French Republic recognizes it, and undertakes to give compensation to all citizens who suffer from the hostilities of the war. But international usage is also with us, and we would ask the Prime Minister to cause a return to be made of the law in this matter in the forty-four nations who were represented at the Hague Convention of 1907. I am sure the following words from a letter by Mr. Paul J. Mallmann, the well-known American civil engineer, now in London, are well worth consideration :—" During the War of Secession, when my country, the States, were in the throes of the most deadly brother-war the world has ever seen, a good deal of property belonging to my late father was destroyed, but it never occurred to the conquering North not to make good that damage, though my father fought for the South against them. In the present war, France, Italy, Russia, Austria, and Germany are prepared, without committees, to make good the damage arising out of acts of war."

#### MR. LLOYD GEORGE'S REPLY.

Mr. Lloyd George: My Lord Mayor and gentlemen, you have presented your case with great moderation, but with great force. You represent towns which have sustained a great deal of damage through these insensate and barbarous raids. There is at the present moment, I understand, an insurance scheme on fairly generous and liberal lines for dealing with this very problem, but I am not sure that it is completely applicable to the facts of the case for many reasons. First of all, there is always the difficulty of making any scheme of this kind known to the smaller people, and it is not always that they can take advantage of them. There are not merely tradesmen and factory owners and owners of big properties who are suffering, but there are poor people who have had their all destroyed in these air raids, and it is just as important to them to have protection, and they are just as much entitled to it, as are these great factory owners, and others living under more prosperous conditions. And I am not sure that it is a complete answer to say to these poor people, " Well, you should have insured under some scheme," because it takes a long time, as everybody who has been associated with insurance matters knows, to bring home the benefits of insurance to every class of society. It requires many agencies, and an army of persuasive tongues for that purpose, and we have no time for that sort of thing in this war. I think myself that, in principle, you have certainly made out a case. I should like to consider the details carefully, and my suggestion is that you appoint to-day two, or at the outside three, of your number to get into communication with me, or with any particular department or departments whom the Cabinet may order to deal with the question, for further consultation. The French Government have given a general pledge that the devastated areas will be restored. Well, the devastation there is on a more wholesale and a more terrible scale, and the losses inflicted are terrible; and the burden of the French Government will be all the greater. But whether great or small, the principle is exactly the same. We must protect our people, in so far as we can, against the con-

sequences of these barbarities, and we ought to do so without distinction of rich or poor. Therefore in principle I accept, on behalf of the Government, the case you have put before me; but, as I say, I should like to consider the details a little further, and I invite you to meet somewhere and to give me the names of, say, three of your number who would be prepared to communicate with the Government and to work out with them the details of a scheme.

The Lord Mayor of Bordon: Mr. Lloyd George, on behalf of the deputation, I beg to tender our sincere and grateful thanks for the courtesy with which you have received us.

The deputation then withdrew.

## Companies.

### The London City and Midland Bank (Limited).

The statement of accounts issued by the London City and Midland Bank (Limited) shews the following figures compared with those of 30th June, 1916 :

#### STATEMENT OF ACCOUNTS.

	June 30, 1917.	June 30, 1916.
Current deposit and other accounts	£180,417,249	£157,539,256
Acceptances	7,516,900	7,559,641
Cash in hand and balance at Bank of England	36,477,713	38,888,013
Money at call	8,579,186	8,570,085
British Government securities	33,399,534	33,437,708
Other investments	3,385,494	4,480,557
Bills of exchange	12,252,266	13,047,413
Advances on current accounts, loans, etc.	69,322,513	65,159,660
Advances on War Loan	22,978,581	

## Law Students' Journal.

### The Law Society.

(continued from p. 620.)

#### FINAL EXAMINATION.

The following candidates (whose names are in alphabetical order) were successful at the Final Examination held on 18th and 19th June, 1917 :—

Baron, Herbert	Jenkins, Thomas Milwyn Lloyd
Bishop, George Rendel	Jones, Featherstone Lewis
Briggs, Robert Henry	Lamb, Alfred
Cubitt, William Martin	Letcher, Henry Percival, LL.B. (Lond.).
Davies, Edward	Lewis, Francis Ernest
Drew, Joseph Gardner	Minton, Horace
Evans, Emrys, B.A., LL.B. (Cantab.), LL.B. (Lond.).	Newman, William Henry
Falconer, David Henry	O'Connor, Edmond
Folkes, Alfred John	Puckering, Walter Ernest
Hall, Alfred Edward	Rennison, Arthur Noblett
Hall, James Malcolm	Rigby, John Marsden
Hammond, Edgar Amédée, B.A. (Oxon.).	Scorer, William
Harrison, William Frederick Crisp	Smith, Kenneth Gill
Henningham, Thomas George	Teff, Solomon, B.A. (Lond.).
Holloway-Pike, John Edward	Thornton, Harold, B.A. (Cantab.).
Janner, Barnett, B.A. (Wales).	Wardle, John
	Watson, John Alfred

No. of candidates, 33; passed, 33.

# THE LICENSES INSURANCE CORPORATION AND GUARANTEE FUND, LIMITED,

24, MOORGATE STREET, LONDON, E.C.

ESTABLISHED IN 1880.

## LICENSEES INSURANCE.

SPECIALISTS IN ALL LICENSING MATTERS.

Upwards of 750 Appeals to Quarter Sessions have been conducted under the direction and supervision of the Corporation. Suitable Clauses for insertion in Leases or Mortgages of Licensed Property, Settled by Counsel, will be sent on application.

## POOLING INSURANCE.

The Corporation also insures risks in connection with FIRE, CONSEQUENTIAL LOSS, BURGLARY, WORKMEN'S COMPENSATION, FIDELITY GUARANTEE, THIRD PARTY, &c., under a perfected Profit-sharing system.

SEND FOR PROSPECTUS.



**HONORARY DISTINCTION.**

The Examination Committee recommend the following as being entitled to Honorary Distinction:—

**SECOND CLASS.**

(In alphabetical order.)

Herbert Baron, who served his articles with Mr. Jonas de Meza; and Mr. John Hudson Hudson, of the firm of Messrs. Abbott & Hudson; both of London.

Henry Percival Letcher, LL.B. (Lond.), who served his articles with Messrs. Smith & Kenny, of Paignton, and Messrs. Evelyn Jones & Co., of London.

**THIRD CLASS.**

Emrys Evans, B.A., LL.B. (Cantab), LL.B. (Lond.), who served his articles with Mr. William George, of the firm of Messrs. Lloyd George & George, of Criccieth.

By order of the Council,

E. R. COOK, Secretary.

The Law Society's Hall, 113, Chancery-lane, London, W.C. (2).

6th July, 1917.

**STUDENTSHP. 1917.**

The Council, acting on the recommendation of the Legal Education Committee, has made the following award of a studentship, of the annual value of £40, renewable at the discretion of the Council, subject to the conditions prescribed in the regulations:—

(*Candidates under 19, having certain educational qualifications.*)

Mr. L. J. D. BUNKER.

[Mr. Bunker was educated at Brighton Municipal Secondary School.]

By Order of the Council,

6th July, 1917.

**League of Nations Special Conference Committee.**

A series of conferences to discuss the project of a League of Nations to ensure a durable settlement after the war is being arranged. The first of these was a conference of Clergy, held on Tuesday, 17th July.

The second, a Conference of the Legal Profession, is to be held at the Caxton Hall, Westminster, on Monday next, 23rd July. The speakers will include the Right Hon. Lord Parmoor, who will take the chair, the Right Hon. Lord Buckmaster, the Right Hon. Lord Shaw of Dunfermline, and the Right Hon. Sir Walter Phillimore.

This Conference will be held on Monday, 23rd July, at 4.30 p.m. The meeting will be private, and tickets of admission, available for members of the profession, can be obtained from the Secretary, League of Nations Conference Committee, 47, Victoria-street, S.W. 1.

**Obituary.****Mr. H. Chatfeild Clarke.**

Mr. HOWARD CHATFEILD CLARKE, F.R.I.B.A., died on the 12th inst., from heart failure, following pneumonia, brought about by overwork. He had recently been actively engaged with surveys and valuations made all over the country at the request of the Ministry of Munitions, for which he acted as honorary adviser to the Ministry. Mr. Chatfeild Clarke was the son of the late Mr. Thomas Chatfeild Clarke, also a distinguished architect, and was a Fellow of the Royal Institute of British Architects and past president of the Surveyors' Institution (1914-1915). Many buildings in the City and West-end were erected from his designs, among them the new hall for the Cordwainers' Company. He was surveyor to the Fishmongers' and Cordwainers' Companies, and to several of the leading insurance companies.

Mr. Chatfeild Clarke was educated at Clifton College, and married a daughter of the late J. J. Galt, of Fernhill Park, Isle of Wight. He leaves three sons and three daughters. Two of his sons have commissions in the Army, and one of them has been reported missing and wounded.

**Legal News.****Appointments.**

Sir CHRISTOPHER JOHNSTON, K.C., M.P., has been appointed to be one of the Senators of His Majesty's College of Justice in Scotland, in room of the Hon. Lord Dewar, deceased. Sir Christopher Johnston has, says the *Times*, held many legal positions in Scotland, where he has long been recognized as an able lawyer and a versatile writer on juridical, historical, and ecclesiastical subjects. He has been Sheriff of Perthshire since 1905, and Procurator of the Church of Scotland since 1907. On Lord Finlay's promotion to the Woolsack Sir Christopher Johnston was elected to Parliament for Edinburgh and St. Andrews Universities, in the representation of which his appointment now creates a vacancy. He received knighthood in the last New Year Honours List. The new judge is in his sixtieth year.

Mr. FRANCIS G. STEED, of the firm of Messrs. Steed & Steed, of Sudbury, Suffolk, has been appointed borough accountant for Sudbury. Mr. Steed was admitted in 1900.

**Changes in Partnerships.****Dissolutions.**

FRANK BAIRDON WRIGHT and JAMES ORE, solicitors (F. Bairdon Wright & Ore), Old-square, in the city of Birmingham. Jan. 1. James Ore will continue to practise in his own name at Old-square, in the said city of Birmingham.

JOHN EMPSON TOPLIS POLLARD and BRETON KNYVET WILSON, solicitors (Bignold, Pollard & Wilson), 17, Prince of Wales-road, in the city of Norwich. June 30. The said John Empson Toplis Pollard will continue to carry on the said business under the style or firm of "Bignold & Pollard."

EDWARD PALLING LITTLE and FERDINAND SAMFORD WHITTINGHAM, solicitors (Little & Whittingham), at No. 2, Bowcroft, Stroud, in the county of Gloucester. June 30. The said Edward Palling Little having taken into partnership William Richard Bloxam in the place of the said Ferdinand Samford Whittingham, the said Edward Palling Little and William Richard Bloxam will carry on business under the style or firm of "Little & Bloxam."

EDWARD SHIPPEY and WILLIAM ARTHUR JORDAN, solicitors (Edward Shippey & Jordan), 17, Cooper-street, in the city of Manchester. Dec. 31. The said Edward Shippey will continue the said business under the style of "Edward Shippey & Co."

*Gazette*, July 13.

**Information Required.**

ARTHUR CECIL BROADBENT, deceased.—To Bankers, Solicitors and others.—Any person having any knowledge or information as to the existence of a will of the above-named deceased, late of 2, Priory-grove, The Boltons, London, S.W., and of St. Stephen's Club, Westminster, and St. James's Club, Piccadilly, is requested to communicate with Minet, May & Co., 5, Dowgate-hill, London, E.C. 4.

WANTED.—Name of Solicitors holding any documents or who have recently executed any business for the late W. M. WELLS.—Reply to WELLS, High Dells, Woldingham, Surrey.

**General.**

In the House of Commons, on Monday, the Chancellor of the Exchequer, answering questions by Mr. Pemberton Billing concerning the payment of compensation to persons injured, or pensions to the relatives of persons killed by enemy air raids over this country, said: Applications either for temporary or permanent assistance should be made to the local representative committees which were instituted at the outbreak of war for the relief of distress caused by the war. Forms of application can be obtained at the offices of each committee. The right hon. gentleman added that payment would be retrospective.

In the House of Commons, on the 17th inst., in reply to Mr. Humble-Williams, Mr. J. F. Hope said:—As my honourable and learned friend is aware, a conference of British and German delegates has recently been held at The Hague to consider questions relating to the welfare of prisoners of war. There were undoubtedly indications that the treatment of British prisoners of war had grown worse during recent months, but there is now every reason to hope that an improvement in the treatment of our prisoners will result from the discussions which took place. All the unsatisfactory information which is received by the Prisoners of War Department is carefully considered, and frequent representations are made to the German Government through the Netherlands Legation at Berlin.

In the House of Commons, on Tuesday, Mr. Beck, answering an inquiry by Major Newman whether another large hotel had been acquired to house the extended activities of the Ministry of National Service, and, if so, what were the proposed extensions in the work of the Department, said: There is no question as to taking an extra hotel for the National Service Department. The Department has no control over the offices allotted to it, and if it is moved it will be to meet the necessities of other Government Departments. Replying to Mr. Pemberton Billing, Mr. Beck said: The number of rooms in the St. Ermin's Hotel originally allotted to the National Service Department was 239, of which 223 are at present occupied. The total number of rooms in the hotel is 447, the balance of 206 being occupied by the Priority Branch of the Ministry of Munitions.

The resignation is announced of Mr. Horace Smith, the London magistrate. Mr. Smith, who was appointed to the Metropolitan Bench in 1888, has been at Westminster since 1901. Mr. C. K. Francis, referring to his retirement, said Mr. Smith's health had been somewhat impaired lately, but though over 80 years of age, his great mental attainments happily were in no way dimmed. As a lawyer, a writer, a painter, and a poet he had claims to distinction. He was beloved and respected by all, and it was to be hoped that he would long be spared to engage in his literary and artistic pursuits. Mr. Philip Conway and Mr. Thomas Dutton, representing the legal profession, gave expression to the loss which the Metropolitan Bench and Westminster Court had suffered by Mr. Smith's resignation. Mr. Barnett, the Court Missionary, referred to the "greatness of heart" of the retired magistrate, and said his home was an open house to those who had come before him, and who were endeavouring to re-establish their characters.

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